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At the time of the passage, by the last Illinois legislature, of the enactments in the pretended interest of coal miners, known as the "weekly payment," "gross weight" and "truck store" acts, we undertook to say that the latter was particularly vulnerable in a constitutional point of view (33 Cent. L. J. 121.) The Supreme court of Illinois, in the recent case of Frorer v. The People, have justified our opinion, by declaring the act unconstitutional, as taking away the power of contract, and as being in the nature of class legislation. It will be recalled that the act in question makes it unlawful for any person or corporation, engaged in mining or manufacturing, to be interested, in any way, in any "truck store" for the furnishing of supplies, tools, provisions, etc., to his or its employees. The court considers it difficult to comprehend how there can be anything in the relations between employer and employee, which renders it necessary to withdraw the power of contract as to tools, clothing, etc., and yet allow them power to contract in all other respects, as for instance for payment in money. It seems quite clear that the enactment has no reference to the comfort or welfare of society, for it applies as well to a case where a poor man in want of tools, clothing and food, without money and without credit, but able and desirous to labor, to obtain tools, clothing and food, applies to the operator of a mine, who is able to, and, but for the prohibition of this law, willing to exchange them on fair terms for the labor of him who needs them, as to cases where there is the strongest probability that the employer will, in such exchange, overreach and defraud the employee. In the view of the court, the act does not attempt to prevent extortion and fraud by the operator of the mine otherwise than by the heroic treatment of withdrawing the power of contract. It proceeds upon the principle that because a liberty may be abused, the liberty itself should be withdrawn, a principle by the extension of which all liberty in the equalization of property may be withdrawn from every citizen. The court concludes that the act in question is "plainly and palpably in conflict with our constitution."

We commend the reasoning and conclusion of the court to the Supreme Court of Indiana. We fail to see wherein the former does not apply exactly to the "weekly payment" law of Indiana which the supreme court in Hancock v. Yaden declared valid and constitutional.

In our recent comments, upon the Boyd v. Nebraska case, it might have been well to have stated that the conclusion upon the question most elaborately discussed in the opinion of Mr. Chief Justice Fuller, viz., that in reference to the effect of the admission of Nebraska as a State as conferring citizenship upon Boyd, was concurred in by only four of the members of the court. Three of them, viz., Mr. Justices Harlan, Gray and Brown impliedly dissented from the view that Boyd was a citizen by the act of admission of Nebraska as a State. The question on which seven of the justices did concur was that the allegations of the answer interposed by Boyd alleging the citizenship of his father, were sufficient in law and therefore that the demurrer of the plaintiff, which was sustained by the Supreme Court of Nebraska, should have been overruled. In other words all the justices except Mr. Justice Field united in holding that the court had jurisdiction of the case and that, upon the record as presented, Boyd had been a citizen of the United States and of the State of Nebraska. In that view it is plain to be seen that the court did not actually pass upon the question of the citizenship of Boyd and to that extent the criticism of our correspondent in a recent issue was well founded.

NOTES OF RECENT DECISIONS.

WATERS—RIPARIAN RIGHTS — ACCRETION AND AVULSION—ACTION BETWEEN STATES.—The Supreme Court of the United States in State of Nebraska v. State of Iowa, 12 S. C. Rep. 396, decide the question as to the conflicting claims of the above States to certain territory formed by changes in the bed of the Missouri river. The object of this suit,

which was originally in the above court, was to have the boundary line between the two States determined. Iowa was admitted into the Union in 1846, and its western boundary, as defined by the act of admission, was the middle of the main channel of the Missouri river. Nebraska was admitted in 1867, and its eastern boundary was likewise the middle of the channel of the Missouri river. Between 1851 and 1877, in the vicinity of Omaha, there were marked changes in the course of this channel, so that in the latter year it occupied a very different bed from that through which it flowed in the former year. Out of these changes has come this litigation, the respective States claiming jurisdiction over the same tract of land. To the bill filed by the State of Nebraska the State of Iowa answered, alleging that this disputed ground was part of its territory; and also filed a cross-bill praying affirmative relief, establishing its jurisdiction thereof, to which cross-bill the State of Nebraska answered.

The court, through Mr. Justice Brewer, held in effect that where the middle of a stream is the boundary between States or private land owners, that boundary follows any changes in the stream which are due to a gradual accretion or degradation of its banks. But where the change is of a sudden and rapid character, such as occurs when a river forms a new course by cutting through a bend, the boundary does not follow the change, but remains in the middle of the old channel.

The law of accretion applies to the Missouri river, notwithstanding that, owing to the swiftness of its current and the softness of its banks, the changes are more rapid and extensive than in most other rivers.

On an original suit in the supreme court between two States to settle a boundary dispute arising from changes in the course of a river, the costs will be divided between the parties, since the question is of a governmental nature, in which each has a vital, though not a litigous, interest.

SALE—CREDIT—INSOLVENCY OF PURCHASER—RIGHTS OF SELLER.—The case of Deim v. Kablitz, 29 N. E. Rep. 1124, decided by the Supreme Court of Ohio is a well considered case on the subject of the rights of the seller of goods upon discovering the insolvency of the purchaser. The propositions laid down are that where goods are sold on credit, it is an implied condition of the contract that the buyer shall keep his credit good; and the seller is not bound to deliver the goods if the buyer be insolvent. The fact that the buyer has given his note or bill for the price, payable at the expiration of the credit, does not vary the rule. If the insolvency of the buyer is discovered by the seller while he yet has the goods, or while they are in transit, and he retakes them, he may elect to treat the agreement for credit as at an end, and resell the goods, unless the buyer pay or tender the price agreed on. A party to a contract of sale cannot sue for its breach unless he is himself able to perform on his part. It is therefore a good defense to an action by the vendee for damages for the failure to deliver the property sold that, at the time fixed by the agreement for the delivery, he was insolvent, and on that account not able to perform his part of the contract. Williams, C. J., delivered a long exhaustive opinion.

INJUNCTION—INTERFERENCE WITH ELECTRIC LIGHT WIRES.—The case of Consolidated Electric Light Co. v. People's Electric Light & Gas Co., decided by the Supreme Court of Alabama, is of interest, bearing on the modern subject of electricity. This was an injunction suit by one electric light company against another. The bill alleged that defendant was about to erect its wires along the streets and alleys on which complainant's wires were located, and to place them in such close proximity to complainant's wires as to do irreparable injury to complainant, and greatly endanger the lives of its servants. It was held that the answer, which merely denied that danger would ensue "with a reasonably prudent management of complainant's system of wires," was insufficient to authorize a dissolution of the temporary injunction. Stone, C. J., says:

> This case brings before us a subject which, in some of its bearings, is comparatively new in jurisprudence. It is the utilization of electricity, alike as a mechanical force and as an illuminator. This use being relatively new and probably not perfected in its adaptations, it behooves us to take our steps cautiously,—very cautiously,—lest our rulings may sanction or encourage conduct which would lead to great destruction of property, if not of life itself; and, while we confess ourselves ignorant of the scientific principles on which this new discovery and use is based, it is common knowledge, in which we must be supposed to share, that very great skill and circumspection must be employed in directing and controlling its ap

plication. This world has learned that the electric current, when heavily charged, is so instantaneously destructive of life that it has in some places, displaced the guillotine and the halter in the execution of criminals. All men know that when it is sufficiently intensified to subserve the purpose of illumination, or the propulsion of machinery, to come in touch with its charged apparatus is inevitable destruction. The authorization and supervision of the apparatus necessary to each of the enterprises brought to view in the record before us are certainly matters which pertain to the municipal government of the city of Birmingham. The privilege or franchise of each company to construct its plant and works within the city must have been first obtained, for no prudent company or corporation would enter upon so expensive an enterprise without such authority; and the authority of the city government in the premises would not terminate with the grant of the franchise. It doubtless could and would assert its power to prevent any and all abuse of the privilege. Vested rights, properly so called, are respected in judicial administration; but no one, under ordinary circumstances, can assert and maintain a vested right to the exclusive enjoyment of a public street. Monopolies are not favorites of the law, and if a street have sufficient width and capacity to admit of more than one public enterprise, without unduly obstructing it as a public highway, an exclusive right should not be granted to one company; and if granted, except under peculiar circumstances, it may and should be revoked. In the case before us it is averred, and not denied, that the Consolidated Electric Light Company—complainant below and appellant here—first established its plant, and first occupied certain streets with its poles and wires. The attempt of the defendant company to establish its service along the same streets gave rise to this suit. It is certainly true that the company which, with authority, first occupies a reasonably sufficient space for its works along a street border thereby acquires the right not to be molested in its possession. It cannot, however, claim more space than is reasonably sufficient for the safe and successful operation of its works. Nebraska Tel. Co. v. York Gas & Electric Light Co. (Neb.), 43 N. W. Rep. 126; Grand Rapids, E. L. & P. Co. v. Grand Rapids, E. E. L. & F. G. Co., 33 Fed. Rep. 659. It is averred in the bill that the defendant company "is now erecting poles along the streets and alleys named in paragraph fourth [those in which complainant was maintaining poles and wires], which extend into the space occupied by orator's wires and conductors, and between said wires and conductors; and that it is now preparing to place, and will immediately place, its wires and conductors, unless restrained therefrom by your honor, which are to be used in a business similar to your orator's, and to be charged with electrical currents the same as orator's on the top of said poles, in and among orator's wires, and within orator's right of way, as hereinbefore described, in such manner as will continually interfere with orator's business, and cause orator irreparable injury, and burn your orator's electrical apparatus, and so deteriorate orator's light and power service, and so prevent orator from supplying its customers and lighting the streets of said city, as to become a public nuisance, and will destroy orator's business; and that it will, if permitted by your honor, greatly endanger the lives of orator's servants, and cause such constant and irreparable injury to your orator that it ought not to be permitted." The answer of the defendant does not deny the acts and intentions done and entertained by it, as charged in the foregoing extract, but denies the danger that would ensue, "with a reasonably prudent management of complainant's system of wires." Its exact language is: "Respondent denies that the character of electrical currents is such that another wire, or system of wires, placed in closer proximity, would irreparably injure them by deteriorating orator's light and power service, or that it would destroy complainant's business, but avers that, with a reasonably prudent management of complainant's system of wires in said city, another system of wires might be operated along all of the said alleys, streets, and avenues in said city, with the greatest security to both complainant and respondent. * * * Further answering said section, respondent says that by the erection of respondent's system, and the observance of care on the part of complainant in the tightening of its wires, and the management of its business, with a view of serving its business, rather than obstructing respondent's business, the danger to its employees [would] be greatly reduced, rather than increased, by respondent's system it is now proposing to erect, and there would be no difficulty for the servants of complainant to observe the wires, and to avoid contact therewith."

We think applied electricity has been long enough employed, and its uses and dangers sufficiently ascertained, to authorize the statement of certain propositions as falling within the purview of common knowledge. Among them, may we not state the following? (1) Contact with electrical conductors, sufficiently charged to subserve the purposes of city illumination, destroys animal life. (2) To properly regulate the apparatus for distributing electric light requires that the employees or servants shall ascend the poles and go among the wires. (3) Two sets of wires, occupying the same space, and charged from different dynamos, located apart, and controlled by separate and independent engineers, could not fail to be dangerous in many ways. We cite the following authorities, which shed light on the questions we have been discussing: Thomp. Electr. §§ 43, 92, 93; Teachout v. Railroad Co. (Iowa), 38 N. W. Rep. 145; Gas-Light Co. v. Hart (La.), 4 South. Rep. 215; Nebraska Tel. Co. v. York Gas & Electric Light Co. (Neb.), 43 N. W. Rep. 126.

We do not think the specific allegations in complainant's bill, setting forth interference, actual and threatened, with its previously established rights, have been sufficiently answered and negatived by the defendant. Giving to the answer a fair interpretation, and not taking its affirmative allegations into account, we think very great danger and loss would likely ensue to complainant's employees and its property if defendant be allowed to proceed with its work as projected.

LIBEL—MALICIOUS PROTEST OF NOTE BY NOTARY—LIABILITY OF BANK.—In May v. Jones, the Supreme Court of Georgia holds that it is libelous and therefore actionable, for a notary public falsely and maliciously to protest for non-payment the acceptance of a person engaged in manufactures, and then send the draft, together with such protest, "to the source from whence it came." That the protest shows on its face that no proper legal demand was made for payment will not render the libel harmless to the credit and

business of the acceptor, since to be published as one who has dishonored his commercial paper tends naturally to produce injury. As a general rule a bank is not responsible for a malicious protest made and published by a notary public rightly employed by it, such notarial act being that of a public officer; and it makes no difference that such notary is also an employee and agent of the bank. In order to render the bank liable, it would at least have to be alleged that it shared maliciously in the production or publication of the libel. An allegation "that the action of the notary in the matter, he acting under the authority of the bank, is the action of said bank," is not sufficient to charge the bank as a joint tort-feasor with the notary. Lumpkin, J., says:

No doubt, as against Jones, a cause of action is sufficiently set out. The declaration distinctly alleges that the charges in the protest were false, fraudulent, and malicious, and made in reference to the plaintiff's trade. Without a due presentment for payment at the place designated in the acceptance there was no legal basis for the protest. The object of the protest being to bind the indorsers, due diligence required a presentment at the place where funds were probably lodged to meet the acceptance. 1 Daniel Neg. Inst. § 644; 2 Daniel, Neg. Inst. §§ 952, 955; Woods' Byles, Bills, *216, and notes. The protest being without proper foundation, false, malicious, and calculated to injure a buisness man's credit, its promulgation and publication constitutes a libel, for which the plaintiff may maintain an action. Townsh. Sland. & L. p. 2, note; Newell, Defam. p. 74; Odger, Sland. & L. *13; 13 Amer. & Eng. Enc. Law, 314. See Williams v. Smith, 22 Q. B. Div. 134. It matters not that the protest carries on its face evidence of its own invalidity. Its validity would probably pass unquestioned, even by those who saw the writing, on the presumption in favor of the official act. As to this presumption see McAndrew v. Radway, 34 N. Y. 511. Moreover, the hurtful consequences to the acceptor's credit would not be confined to those parties immediately interested to inquire into the regularity of the protest. The news of the protest would be quickly spread to each indorser, and become a matter of common knowledge in his business circle. It would run through the complex avenues of trade beyond pursuit and correction by the true character of the protest. The case of Van Epps v. Jones, 50 Ga. 238, does not conflict with this ruling, but rather sustains it. That was an action in the nature of libel against a notary for a false protest, and this court held that the declaration was demurrable because it did not allege that the false statement was made in reference to the plaintiff's profession as an attorney at law. Here the declaration expressly charges that the statements were "made in reference to plaintiff's trade, and calculated to injure him in his trade or business."

But, as against the Merchants' Bank, no cause of action is set out. The plaintiff's theory is that, as Jones, the notary public, was also an employee and agent of the bank, "the action of defendant Jones in the matter, he acting under the authority of defend- [illegible] of said bank." This is all the allegation touching the bank's liability. Although there is conflict in the cases, the prevailing and better holding seems to be that a bank is not liable for the negligence or misconduct of a notary employed by it to protest negotiable paper. The reason is that the notary is not a mere agent or servant of the bank, but is a public officer sworn to discharge his duties properly. He is under a higher control than that of a private principal. He owes duties to the public which must be the supreme law of his conduct. Consequently, when he acts in his official capacity, the bank no longer has control over him, and cannot direct how his duties shall be done. If he is guilty of misfeasance in the performance of an official act, the bank is not liable. 1 Morse, Banks, §§ 102*d*, 265; Bolles, Banks, § 465; 2 Amer. & Eng. Enc. Law, 113; 16 Amer. & Eng. Enc. Law, 763; notes to Allen v. Bank, 34 Amer. Dec. 313; Hyde v. Bank, 17 La. 560, 56 Amer. Dec. 621; Tiernan v. Bank, 7 How. (Miss.) 648, 40 Amer. Dec. 83; Agricultural Bank v. Commercial Bank, 7 Smedes & M. 592; Britton v. Niccolls, 204 U. S. 757; Bank v. Butler, 41 Ohio St. 519. That the notary is also an employee and agent of the bank does not alter the case. There is still a sharp dividing line between his duties as agent and his duties as a public officer. When his public service comes into play, his private service is, for the time, suspended. See Allen v. Bank. 22 Wend. 215, 34 Amer. Dec. 289. In some cases, it seems, the bank would be liable for negligence in the selection of a notary, but no such question arises in this case.

There is no allegation that the bank participated in the libelous protest, except the one above quoted. Doubtless the bank could render itself by maliciously procuring a false protest to be made. But there is no allegation of this import, the supposed liability of the bank being rested entirely on the general authorit given to the notary. According to the plainttff's own interpretation, the action is not brought for a wrongful protest. It may be that the bank authorized the notary to act, but it cannot be inferred from this that it contemplated the perpetration of a libel. On the contrary, the bank would have a right to rely upon the faithfulness of the notary as a public officer. As it could not command him to do his bidding in his official action, it cannot be presumed that it directed him to violate the law. This is matter for distinct allegation, in which the declaration utterly fails.

CONCLUSIVE EFFECT OF JUDGMENTS.

A judgment is a decision or sentence of the law pronounced by a court or other competent tribunal upon the matter contained in the record.[1] For the purposes of this paper I shall consider that all judgments are final, valid, and rendered by a court of competent jurisdiction; and it will be my endeavor, from this basis, to reduce the subject to general principles, almost wholly disregarding special instances.

Judgments, in regard to their conclusive effect, are divided into two classes—judg-

[1] 3 Blackstone's Com. 395.

ments *in rem* and judgments *in personam*. I shall first consider judgments *in personam*.

Judgments are *in personam* when the proceedings are against the person; providing the adjudication be of such a nature as to be binding only upon the particular parties to the suit and their privies in blood or estate.

It is a general principle well settled by numerous authorities, that a point or controversy once squarely decided by a court of competent jurisdiction cannot again be drawn in question in any future suit between the same parties and their privies, in a court of concurrent jurisdiction. But in order to constitute a judgment a legal estoppel, the very fact must have been directly in issue in the former case on the face of the pleadings and the verdict must be pleaded as an estoppel. The rule does not apply where the point comes only collaterally under consideration, or can be argumentatively inferred from the decree.[2] It is another general principle, as well settled as the one just preceding, that a judgment rendered by a court of competent jurisdiction is a bar to another suit on the same subject-matter between the same parties or their privies as long as it remans unreversed.[3]

It is important to notice right here, that in all cases where a judgment is pleaded as an estoppel, it is either conclusive or of no effect; and unless it is conclusive, it is not admissible in evidence to prove the matters on which it is based.[4] To make clear what I have already said, it becomes necessary to consider:

Who are Parties?—According to Greenleaf, "parties are all persons having a right to control proceedings, to make defense, to adduce and cross-examine witnesses and appeal from the decision if any appeal lies."[5] It was held by the Supreme Court of Missouri that these characteristics may sufficiently exist without making the party an actual party to the record. Thus, in the case of Wood v. Engel,[6] it appeared that the subject of the litigation (a billiard table) had been the subject of a previous litigation between Julius Balke and Chas. Swift, reported in 53 Mo. 85. It was there shown in evidence that the plaintiff was an active participant in the trial of Balke v. Swift, that he claimed the property as his own, appeared as a witness in the case and, in the absence of Swift, assumed control of the case, and employed and paid attorneys to attend to it. The court held that these facts brought the plaintiff very clearly within the definition of "party" to the action he thus defended, and held the judgment recovered in the former action a bar to the present one. Regarding the definition of "parties," as given by Greenleaf, the Supreme Court of Maryland says: "All these privileges (not any one of them) are essential to the assertion and protection of private rights and the investigation of the truth. Only, therefore, those who have enjoyed them collectively should be concluded by a judgment, decision, or decree."[7]

And the Supreme Court of Georgia held that the mere employment of an attorney did not bind one to abide the judgment rendered.[8] The decisions holding that the mere appearance as a witness in a case will not preclude a person in a succeeding suit are innumerable.

Pursuing this subject a step farther, the question arises, must the parties in the second suit be all the same, or may there be a greater or less number in one suit without vitiating the conclusiveness of the judgment rendered in the first action when sought to be availed of subsequently? It seems to be established by abundant authority, that a former judgment can be pleaded in estoppel in a subsequent suit between the same parties, even though they were parties to the former suit that are not parties to the subsequent, or parties to the subsequent not parties to the former suit,[9] and it makes no difference whether they are respectively the same parties to the record or not. The plaintiff in the former may be defendant in the subsequent suit and *vice versa*, and the conclusive effect of the judgment remains the same.[10] It is not, however, sufficient to satisfy the rule of *res adjudicata* that the same persons are litigants in the two actions; for the same per-

[2] Towns v. Nims, 20 A. D. 578; Hopkins v. Lee, 6 Wheaton, 109.
[3] Housemire v. Moulton, 22 Barb. 285; Smith v. Whiting, 11 Mass. 445.
[4] 21 Conn. 491.
[5] Greenleaf Ev. vol. 1, p. 535.
[6] 63 Mo. 194.
[7] 19 Md. 80.
[8] 54 Ga. 600.
[9] Davenport v. Barnett, 51 Ind. 333; Eble v. Bingham, 7 Barb. 497, 6 Hill, 119, 24 How. 241.
[10] 19 Mich. 235.

son, may, in the law, be considered as another person, and consequently another party by suing in a different capacity. In the case of Leggatt v. R. R. Co.[11] this principle was invoked thus: A passenger on the Great Northern Railway was killed by an accident, or rather so injured that he died in consequence. An action was brought, under the statute, against the company, whose negligence was alleged to have caused the injury, by the widow, as administratrix of the husband's estate. One of the defenses was that, after the death of the husband, the widow had sued the defendant company for the injury, in behalf of herself as the wife of the deceased, and of her children, and had recovered damages; the replication, on the other hand, also set up the former suit as *res adjudicata* in respect to the facts, relating to the accident on the ground that in the previous action the company had pleaded "not guilty," and the issues were found for the plaintiff. But this plea was ruled out as to both parties on the ground that the plaintiff sued in the two actions in a different capacity. An interpleader is also concluded by the result as well as original parties.[12] It is also necessary, in order to have the doctrine of *res adjudicata* apply, that the estoppel be mutual. A person cannot plead a former judgment as an estoppel unless the other party could have done the same thing had it been against his interest; or have used it as the foundation of a claim had it been in his favor.

As has been before remarked, a judgment is binding upon the parties and their privies, and I now come to consider who comes within the category of privies. The term privity denotes mutual and successive relationship to the same rights of property,[13] and privies are distributed into several classes according to the manner of this relationship. Thus, there are privies in estate as donor and donee, lessor and lessee, and joint tenants, privies in blood as heir and ancestor, and coparceners; privies in representation, as executor and testator, administrators and intestates; privies in law, where the law without privity of blood or estate, casts the land upon another as by escheat. These are more generally classified into privies in estate, privies in blood and privies in law. But it is neither necessary nor profitable for me to discuss the different classes. "Privies are persons claiming through or under another." This doctrine finds an illustration in the case of a person who buys property *pendente lite*. Here the person who buys is in privity with the vendor, and is bound by the judgment, even though he purchases without notice of the pending action.[14]

Joint Parties.—How is it as to joint parties? Will a judgment against two or more who are jointly liable be a bar to an action against the others? The authorities on this point are exhaustively reviewed by Story, J., in the case of Trafton v. the U. S.[15] In this case the facts were substantially as follows: Trafton was postmaster in the city of Bangor, and gave a bond with sureties for the faithful performance of his duties. During his continuance in office John Bright, the co-defendant, acted, for a certain salary, as his assistant in the office. In June, 1839, Trafton was removed from office and it was found that a balance of $444.41 was due from him to the government, for which amount, owing to the circumstances of the case, he and Bright were jointly liable. The government first obtained a judgment against Trafton and his sureties for the said sum with interest and costs. Trafton afterwards became bankrupt, and the United States brought another action against him and Bright jointly. They pleaded the former judgment against Trafton in bar. Justice Story held that where an instrument was joint, a several action against one of the obligors was a bar to a subsequent joint action against both, and held the plea in this case a good bar. He cited the case of King v. Hoar,[16] and many other cases in support of the doctrine. In the case of the U. S. v. Cushman,[17] the same learned justice lays down the rule that, on a joint and several obligation, a judgment against both was no bar to a several action against each of them; and a several judgment against each was no bar to a joint judgment against both. The ground in both cases was the same; that as the parties had expressly made the obligation several and joint, the

[11] Law Rep. L. B. Div. vol. 1, p. 599.
[12] 16 Mo. 147, 23 Mo. 34.
[13] 1 Greenleaf Ev. § 189.
[14] 57 Me. 400, and cases there cited.
[15] 3 Story's Rep. 646.
[16] 8 Jurist, 1127.
[17] 2 Sumner Rep. 426.

merger of either in a judgment would not be a bar of the other.

In Sheehy v. Mandeville, the Supreme Court of the United States, in an opinion written by Chief Justice Marshall, held, that a judgment rendered against only one of the makers of a promissory note (it being a partnership note) was not a bar to a joint suit against both the parties. But the bar was not set up by the partner who was sued in the former suit, but by the other partner not sued; and as to the latter the court thought that, as he was not a party to the judgment, it did not bind him, and would not operate as a merger in his favor. This doctrine has been severely shaken, however, by later decisions and was expressly repudiated in the case of King v. Hoar, above cited, and should be regarded as very doubtful law. The latter case held that, in an action on a joint contract, judgment recovered against a co-contractor may be pleaded in bar. A writer on this subject (Mr. Wells) has deduced the following principles: 1. Where an instrument is joint and several, the plaintiff, at his election, may sue successively the various contractors singly, although he can have but one satisfaction. 2. One joint action will bar any subsequent joint action thereon. 3. A series of several actions, or even a several action against one of the parties, will bar a subsequent joint action. 4. A joint action will bar any subsequent several action. 5. But suit must be brought either severally or jointly, as, if there are three obligors, two of them cannot be sued together and the other separately.

Judgments in Rem.—A judgment *in rem* seems to be very difficult of definition, and it seems that no definition has ever been given that is regarded by the books as satisfactory. The following one, found in Smith's Leading Cases, vol. 2, p. 660, seems to meet with the greatest approval: "A judgment *in rem* is an adjudication pronounced upon the *status* of some particular subject-matter, by a tribunal having competent authority for that purpose, such an adjudication being a most solemn declaration from the proper and accredited quarter, that the *status* of the thing adjudicated upon is such as declared, and concludes all persons from saying that the *status* of the thing adjudicated upon was not such as declared by the adjudication." It is a familiar saying that "judgments *in rem* are conclusive against the whole world," and the conclusive effect is not confined to the parties and their privies, as is the case of judgments *in personam*. Mr. Freeman, in his work on Judgments, dissents from the above maxim. He says: "Neither are they, as is frequently stated, binding on the whole world, for decrees of divorce rendered in one of these United States have frequently been disregarded in the other States, and they would almost certainly be treated as nullities in England if the marriage were contracted in that country between natives thereof; and the probate of a will, though considered as a judgment *in rem* in the States in whose courts it is probated, would have no effect over real property beyond the jurisdiction of that State. The distinguishing characteristic of judgment *in rem* is that, wherever their obligation is recognized and enforced as against any person, it is equally recognized and enforced as against all persons."[18]

The opinion of Justice Hall, in the case of Woodruff v. Taylor,[19] is instructive as conveying an idea of the nature and theory of the proceeding *in rem*. He says: "The probate of a will is a familiar instance of a proceeding *in rem* in this State. The proceeding is in substance and form upon the will itself. No process is issued against any one, but all persons interested in determining the state or condition of the instrument are constructively notified by a newspaper publication to appear and contest the probate; and the judgment is, not that this or that person shall pay a certain sum of money, or do any particular act, but that the instrument is, or is not, the will of the testator. It determines the *status* of the subject-matter of the proceeding. The judgment is upon the thing itself, and when the proper steps required by law are taken, the judgment is conclusive and makes the instrument as to all the world (at least so far as the property of the testator within this State is concerned) just what the judgment declares it to be.

While it may be regarded as a *general* rule that a judgment *in rem* is conclusive as to all the world, yet there are certainly exceptions to the rule. Thus, Justice Hall, in the opinion above quoted, could not say without qualification that the probate of a will was

[18] Freeman on Judgments, § 606.
[19] 20 Vt.

conclusive as against the whole world. He limited the conclusive effect to the property of the testator within this State. A sentence in a matrimonial suit is a judgment *in rem*, and is generally considered conclusive as against the whole world; yet in the case of The People v. Baker,[20] the Supreme Court of New York refused to recognize a divorce granted by the courts of Ohio dissolving the marriage obligations between a citizen of the State of Ohio and a citizen of the State of New York. It held that the State of Ohio had no right to pass upon the *status* of a citizen of New York, and when the citizen of Ohio returned to New York, where his wife was living, and married again, he was guilty of bigamy. And in Cook v. Cook,[21] the Supreme Court of Wisconsin held that a judgment of divorce granted in another State under statutes making jurisdiction dependent entirely upon the residence thereof, the party applying for a divorce, at the suit of the husband against the wife who resided in this State, and who was not personally served with notice, and did not appear in the action, but was ignorant of its pendency until after the judgment was rendered, is not a bar to a subsequent action by such wife in this State for a divorce, alimony allowance and a division of the property of such husband situated within this State.

In The Mary,[22] a person bought a cargo of merchandise in England and put it on board "The Mary" for transportation to the United States. The vessel and cargo were captured by the "Paul Jones," an American ship. In a proceeding in admiralty against the vessel, it was condemned as property of the enemy. The Supreme Court of the United States, by Marshall, C. J., held that that could not prejudice the claim for her cargo; but it was still competent for the claimant of the cargo to controvert the fact that the vessel was the enemy's property so far as that fact could prejudice his claim; which was holding in effect, as it seems to me, that the judgment *in rem* pronounced against the vessel was not conclusive against the whole world. So where it may be said as a general proposition that the judgment *in rem* is conclusive as to all the world, there are exceptions to the rule, and it seems to me that Mr. Freeman is justifiable in making his statement above quoted.

There is a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which the property of non-residents is attached and held for the discharge of debts due by them to the citizens of the State, and actions for the enforcement of mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant alone is sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties.[23] And in the case of Woodruff v. Taylor, before cited, it is said that attachment proceedings are not strictly *in rem*. If both the summons and the attachment are personally served in the State, the proceeding is, to a great extent, one *in personam*, except that the property to be attached is to be applied in satisfaction of the judgment; while, if the summons is not served, and the defendant does not appear, the proceeding against his property by attachment is more in the nature of a proceeding *in rem;* but the judgment is conclusive only against parties and their privies.

W. C. Owen.

Superior, Wis.

[20] 76 N. Y. 78.
[21] 56 Wis. 195.
[22] 9 Cranch, 126.
[23] Freeman v. Alderson, 119 U. S. 184; Black on Judgments, § 793.

HOMICIDE—DEATH FROM WOUND INFLICTED WITHOUT THE STATE.

EX PARTE McNEELY.

Supreme Court of Appeals of West Virginia, Feb. 6, 1892.

1. The provision of the West Virginia Code, 1891, ch. 144, § 6, that if a person stricken without the State die within it, the offender shall be prosecuted and punished as if the mortal blow had been given in the county where the death occurs, is not unconstitutional by virtue of the provision (Const. W. Va. § 14, art. 3) that trials shall be in the county where the alleged offense was committed.

2. Const. U. S. art. 3, § 3, and amendment 6, regulating the place of criminal trials, applies only to proceedings in the federal courts.

BRANNON, J.: Stuart McNeely filed his petition in July, 1891, in the circuit court of Logan county, praying for a writ of *habeas corpus* to discharge him from the jail of that county, and upon demurrer the court refused to award the writ, and dismissed the petition, from which action of the court he has obtained this writ of error. The petition states that in 1891 Frank Hurley died from gunshot wounds inflicted by McNeely while both were in the State of Kentucky, standing between high and low water marks, about 10 feet above the water's edge, on the Kentucky side of the Tug Fork of Big Sandy river, formerly called the "East Fork;" that Hurley died in Logan county; that McNeely is confined in the jail of Logan county upon criminal process issued by a justice of that county to answer for the murder of Hurley; that the State of West Virginia has no jurisdiction over said offense, because it was committed in Kentucky; and it prays that a writ of *habeas corpus* issue for his relief, and that he be discharged from custody. The petition does not state anything as to McNeely's citizenship. The boundary line in that locality between the States of West Virginia and Kentucky is as it was between Virginia and Kentucky at the date of the formation of West Virginia. Const. W. Va. art. 2, § 1; Code Va. 1860, ch. 1, § 6. The stream called "Tug Fork" is here the boundary, and the line between the States is its middle. Handly's Lessee v. Anthony, 5 Wheat. 374; 1 Bish. Crim. Law, § 150. I think it clear that the mortal blow was given within the territory of Kentucky. But Hurley died within the territory of West Virginia; and under our Code, though the mortal blow was given in Kentucky, this State has jurisdiction to try McNeely, if the provision be valid. Chapter 144, § 6, reads as follows: "If a person be stricken or poisoned in, and die by reason thereof out of, this State, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county in which the mortal stroke or poison was given or administered. And if any person be stricken or poisoned out of this State, and die by reason thereof within this State, the offender shall be as guilty, and may be prosecuted and punished, as if the mortal stroke had been given, or the poison administered, in the county in which the person so stricken or poisoned may so die." It is relied upon as a chief point in the prisoner's case that the latter clause of said Code section is in violation of section 14, art. 3, of the State constitution, and section 3, art. 3, of the federal constitution. Section 14, art. 3, of the State constitution provides that the trials of crimes shall be "in the county where the alleged offense was committed." This raises the question, where was this offense committed, in a legal point of view,—in Kentucky, where the bullet struck its victim, or in West Virginia, where he died? We must look to the common law to answer this outside the statute. The ancient common law is said to have propounded the very unreasonable principle that, if a person be wounded in one county, and die in another, his murderer could be tried in neither. 1 Hawk. P. C. ch. 13, § 13, thus states it: "It is said by some that the death of one who died in one county of the wound given in another was not indictable at all at common law, because the offense was not complete in either county, and the jury could only inquire of what happened in their own county. But it hath been holden by others that, if the corpse were carried into the county where the stroke was given, the whole might be inquired of by a jury of the same county." In volume 2, ch. 25, § 36, Hawkins states that as the more general opinion. Chitty says, in 1 Crim. Law, *178, that where the blow and death were in different counties "it was doubted" whether the murderer could be punished in either. Blackstone says it could be punished in either county. Bl. Comm. bk. 3, p. 303. But that great English authority on criminal law, Lord Hale, vindicates the ancient common law from this reproach, saying: "At a common law, if a man had been stricken in one county and died in another, it was doubtful whether he were indictable or triable in either; but the more common opinion was that he might be indicted where the stroke was given, for the death is but a consequence, and might be found, though in another county." So says East (1 P. C. ch. 5, § 128). In John Lang's Case, Y. B. 6 Hen. VII. p. 10 (A. D. 1490), where the blow and death were in different counties, the court said: "In this case it hath been used after the death to bring the dead man, to-wit, the body, into the county where he was struck, and then to inquire and find that he was struck and died of that." And in a case in 1491 Tremaille, J., said, where the blow and death were in different counties: "It seems it is not material where he died, for the striking is the principal point; but it requires death, otherwise it is no felony; but whether he died in one place or another is not material." Y. B. 7 Hen. VII. p. 8. Abbott, C. J., in Rex v. Burdett, 4 Barn. & Ald. 169, held Hale's authority as superior in this matter. Wharton, in 1 Crim. Law, § 292, says: "By the early English common law the place where the mortal stroke was given had jurisdiction in cases of homicide. As there seemed, however, to be doubts in cases in which the blow was in one jurisdiction and the death in another, the statute 2 & 3 Edw. VI. ch. 24, was passed, the effect of which, though inartificially drawn, is to give the place of death jurisdiction. This statute has been held to be part of the common law in several States in this country; but even where it is in force it does not, according to the better opinion, divest the jurisdiction of the place where the blow was struck." 1 Bish. Crim. Proc. § 25. I think the proposition that the prosecution may be where the blow is given, no matter where the death, was the rule under the ancient common law, and certainly under the modern common law

as held in American courts. The true view is that the blow is murder or not, according as it produces death or not within a year and a day; and in all cases an indictment lies in the county where the blow was given. *Id.* § 51. President Garfield received his wound in the District of Columbia, but died in New Jersey; and under a statute that any one "who commits murder within any fort, arsenal, magazine, dock-yard, or any other place or district or country under the exclusive jurisdiction of the United States, * * * shall suffer death," it was contended that to say one commits murder within a district the blow and death must both take place there, but on full consideration it was held that the crime was committed within the District, because the blow was there. Guiteau's Case, 47 Amer. Rep. 247. In Riley v. State, 9 Humph. 646, where the death and blow were in different counties, the Tennessee court, under a statute providing that trial should "be in the county where the offense may have been committed," said it repealed the statute of 2 & 3 Edw. VI., that the blow was the offense, the death the mere result; and that it never was the rule under the old common law that, where death and blow were in different counties, the trial could be in neither, and the trial must be in the county where the blow was given. In Green v. State, 66 Ala. 40, it was held that a statute authorizing prosecution for murder in the county where the blow was struck, though death was out of the State, was valid; the court saying that the wound was the offense, death a sequence, rather than a constituent elemental part, of the crime, and that without the statute the State had jurisdiction. In State v. Gessert, 21 Minn. 369, a person was stabbed in Minnesota, and died in Wisconsin, and it was held that the death in Wisconsin was only a consequence of the act committed against Minnesota, and he was triable there. It was not based on a statute. In State v. Kelly, 76 Me. 331, the doctrine is asserted as common law that where the blow is given is where the crime is committed. People v. Gill, 6 Cal. 637, holds the crime is where the blow is, and where the place of trial is changed after the blow by law it must be at the place fixed by law at date of blow. In State v. Bowen, 16 Kan. 475, where the indictment did not charge death to have occurred in the State, where there was no statute on the question, Brewer, J., said that, as the only act the defendant does towards the death is giving the blow, that place is the place where he commits the crime, and that the subsequent wanderings of the wounded man, uninfluenced by the defendant, do not change the place of the offense; that death simply determines the character of the crime in giving the blows, and refers back to the act, and gives it quality.

The case of Linton, 2 Va. 205, is said in Hunter v. State, 40 N. J. Law, 514, to be the only case holding that where a blow is given in one State, followed by death in another, there can be no prosecution in the State of the blow. No reasons are given by the court. I do not see how that decision was reached, except on the untenable ground of the alleged rule of the old common law that, where the blow is in one county, death in another, neither can try the case; by parity reasoning, where blow is in one State, death in another, the State of the blow cannot prosecute. That must have been the reason, as Hawkins and Chitty, referring to that rule, are cited, and Blackstone, Hale, and East, denying it, are not referred to. The statute 2 & 3 Edw. VI., to remove the doubt about that rule, was not then in force, all British statutes having been repealed by the act of 27th of December, 1792. 1 Tuck. Bl. Comm. 8; 1 Rev. Code, 1819, ch. 40. The fact that it is the place of the blow where the crime is committed is further sustained by the well-settled proposition that there can be no prosecution at the place of death merely, unless a statute authorizes it. 1 Whart. Crim. Law, § 292. The said statute of Edward was in force in Virginia under the ordinance in convention in May, 1776, declaring operative in Virginia all acts of the English parliament of a general nature, not local to Great Britain, passed since the fourth year of the reign of King James I., when the Virginia bill of rights of June 12, 1776, was adopted; and it may be said that, as the statute of Edward allowed a prosecution in the county of death, thus making that county, in a legal sense, the county where the offense was committed, we must interpret the constitutional clause in question by the light of that statute. If the Virginia bill of rights, which remained unchanged down to the formation of this State, had used the word "county" as does ours, there would be force in the suggestion greater than there is; but it provided that an accused should be tried by a "jury of his vicinage." Blackstone, in book 3, p. 350, merely remarks that the word "visne," from which juries were drawn at common law, was interpreted to mean "county." This word "vicinage," borrowed from old common law, is not defined in Bouvier or Black in their law dictionaries as meaning "county," but "neighborhood, vicinity." It did not mean "county." In discussing the matter *de quo vicineto*—out of what neighborhood—the jury shall come, 3 Co. Litt. 464, states that it must be "of that town, parish, or hamlet, or place known out of the town, etc., within the record, within which the matter of fact issuable is alleged, which is most certain and nearest thereunto, the inhabitants whereof may have the better and more certain knowledge of the fact." Chitty (1 Crim. Law, 500) says the jury at common law must come "from the very *ville* or place where the offense was committed," and that there was a challenge for want of hundreders on the jury. Far back, under the common law, murders were tried just where they occurred, by close neighbors, acquainted with the facts, as jurors upon view of the body (*super visum corporis*). That the vicinage was the neighborhood, not the county, is plain from Proff. Jury, § 80, and Thomp. Trials, § 1. So it will appear from Hargrave's note to 3 Co. Litt. 464, where it will also appear

that, while a statute in Anne's reign altered this in civil cases, allowing the jury from the body of the county, it remained unaltered in criminal cases when Hargrave wrote the note, and was not changed as to felonies until 6 Geo. IV. ch. 50, § 13; the 24 Geo. II. ch. 18, only applying to actions on penal statutes. Thus at the date of the adoption of the Virginia bill of rights "vicinage" meant "neighborhood," "vicinity;" not "county." Judge Green so thought, for in the opinion in State v. Lowe, 21 W. Va. 788, he says the word "vicinage," as used in the Virginia bill of rights, meant "vicinity," and was not the equivalent of "county;" and he ventures the opinion that under it the statute allowing a trial in either county, where an offense occurred within 100 yards of a line between two counties, would be constitutional, but not so under our constitution. And the Massachusetts court, in Com. v. Parker, 2 Pick. 550, held that, where the constitution used the word "vicinity" in providing for the place of trial it was not equivalent to "county." My own investigation of the old common-law books brings me to the same conclusion with Judge Green. Therefore, no light upon the construction of the clause in question in our constitution is shed by the statute 2 & 3 Edw. VI. When our constitution was adopted, that statute was not law, because of the repeal of English acts in 1792; and, if that act had not repealed it, the closing chapter of the Code of 1849 would have done so.

Again, I doubt whether the statute of Edward would apply anyhow, because it provided only, the blow and death both being in the kingdom, but in different counties, that the county of death might take jurisdiction, not applying to the case where the blow was out of the kingdom but the death within; and that this is so is apparent from the fact that parliament passed a statute in second year of Geo. II., providing where trial should be where blow and death happened, the one or the other, outside the kingdom. 1 Hawk. P. C. 94; 1 Chit. Crim. Law, *179. The case of a thief carrying goods from county to county or from State to State, and punishable in either, is not analogous. He himself, every moment, everywhere he goes, is actively committing crime. Thus I should think that, as a common law the place of the mortal stroke is the place where the offense is committed, and the place of death is not, and could only be made the place of trial by statute, when our constitution guaranties a trial in the county where the offense is committed it would mean the place where the stroke was given. Can a State punish an act done outside its territory? It seems to be an axiom that a State's criminal law is of no force beyond its limits. Whart. Confl. Laws, § 18; Story, Confl. Laws, § 621; 1 Bish. Crim. Law, § 110. Story, J., said in The Apollon, 9 Wheat. 362, that laws of a country "must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction." It can be asserted that a crime committed in another country, and in violation of its laws, cannot, by legislative fiction or construction, be considered an offense in another country. This doctrine does not, however, apply to cases where a crime is perpetrated partly in one and partly in another country, provided, as Mr. Bishop says, "what is done in the country which takes jurisdiction is a substantial act of wrong, not merely some incidental thing, innocent in itself alone." But this brings us back to the same question again. The American States are distinct and separate, as between themselves, as to the administration of criminal law. Wherein a State assumes criminal jurisdiction over crimes done within another it would seem to be without power. If Hurley had died in Kentucky, could this State try McNeely, even if she had a statute extending so far? Could she thus exercise power over soil, persons, and acts without her territorial limits? There are two lines of reasoning applicable to this case. One is that, while the blow is the beginning in the criminal transaction, it is only the beginning. The wound is because of the wrong in planting the bullet in the body, that wrong yet operating towards the consummation, which is the death; that the prisoner's agency is yet active in all this, in the languishing, in the decay of the physical strength, in the dying, by reason of his wrong that started the process ending in death; and that its energy ceased not for a moment until death; and that he caused this death. The other is that the shot that planted the bullet is the wrong. With it the prisoner's action began and ended. The suffering and dying are acts not his, but acts of the deceased; mere consequences or results of his act. He is answerable only because he started the force causing death; that he struck no blow in this State, and committed no breach of her peace or sovereignty. The former view is ably held in Com. v. Macloon, 101 Mass. 1, and Tyler v. People, 8 Mich. 320, and Com. v. Parker, 2 Pick. 550; while the latter view is held in 1 Bish. Crim. Law §§ 112-116, and Bish. Crim. Proc. §§ 51, 52, and State v. Carter, 27 N. J. Law, 500. I must, for myself, say that I have not been able to relieve myself from serious doubt as to the validity of the second clause of section 6, ch. 144, Code, subjecting to punishment here a person striking a blow outside this State, where the consequent death occurs within this State, because I regard the crime as committed where the mortal wound is inflicted. Under this statute, a man dealing a blow in California or Australia, if the stricken person comes here and dies, may be tried here, far away from the scene of the tragedy, where his character is known, far away from friends to aid in his defense, far away from the witnesses of the act, with no power in this State to compel the attendance of those witnesses. The law of California or Australia may punish the act under the same facts in a certain way; ours with more severity. Does the prisoner know of our law when he strikes the blow? Is he bound to know our law? He is not. Neither in fact does he know, nor in theory is he bound to know, our law

when he delivers the blow. He cannot tell into which one of the many countries of earth the victim may wander within the year and day before death, and he cannot study the laws of all States. True, the State may as much need witnesses from the place of death to prove death and dying declarations, but the prosecuting need is not to be compared to his need; and the State has subordinated her convenience and facility of prosecution by guarantying him by her laws compulsory process for evidence and trial in the county where the offense is committed. I cannot see very clearly that the man from California or Australia has a trial in the county where the offense is committed. Mr. Bishop, in reasoning against the enforcement of such laws, says it is not a question of constitutional law, but that such laws ought to be construed in harmony with the law of nations, and their enforcement denied, except as to our own citizens. This is not without force. It may be said with some plausibility that the constitutional provision applies only where both blow and death occur within the State, and only selects what county shall hold the trial; and that it does not apply where part of the offense is outside the State. But I regard it a question of jurisdiction arising under the constitution; and that nowhere in the State can trial be had except in that county where the offense is committed, and if not enough of the act occurred in the county of death to enable us to say that the offense was committed there, then it has no jurisdiction, nor has any county in the State; For I construe the clause as meant to be co-extensive with all criminal acts justifiable under the power of the State. Mr. Bishop, the great author, while resisting such statutes with reasoning which seems to me very atrong and satisfactory, yet says that the question is not one of constitutional law, but one of international law; and properly admits that, if a legislature command a court to violate international law, it is bound to do so. See Endl. Interp. St. § 175. If, then, he be right in the question, not being one of constitutional law, this court could not, on his theory, refuse to execute this law. Virginia, as far back as 1840, enacted that if a blow be given in the State, and death results in another, prosecution might be in Virginia, in the county of the blow; but, though her criminal law has undergone several revisions, and though England and several of the States of this Union had legislation punishing as murder cases where the blow was without but death within England or the State, Virginia has never adopted it. Did she doubt its validity? It was inserted in our Code in 1882. But, though I have doubts on the subject, we must not forget that the legislature, composed of many men of legal ability and learning, and vested by the people with the law-making power of the State, has approved this provision. A court must be slow and cautious to overthrow its action. In none but a case of very plain infraction of the constitution, where there is no escape, will or ought a court to do so. To doubt only is to affirm the validity of its action. I resolve my doubt in this way. I shall add that I find no case directly holding such legislation void, though a number of cases afford ground for logical deduction to that effect. They are cited above. But there are two cases asserting its validity. In Tyler v. People, 8 Mich. 320, a man was punished in Michigan under such an act for a blow dealt in Canada, one judge dissenting; and in Macloon's Case, 101 Mass. 1, a British subject and a citizen of Maine were convicted for murder where the act was on a British vessel at sea, but the party died in Massachusetts. Though not the point of decision, it is conceded that such legislation is valid, in the opinions in Steerman v. State, 10 Mo. 317, and State v. Kelly, 76 Me. 331, and by Mr. Justice Bradley in the Guiteau Case, (note 47 Amer. Rep. 261).

As to the contention that the statute before us violates section 3, art. 3, Const. U. S., I need only say that it applies to United States court proceedings only, relating only to proceedings for offenses against the United States. So does amendment 6. Fox v. Ohio, 5 How. 410; Cook v. U. S., 138 U. S. 157, 181, 11 Sup. Ct. Rep. 268; Barron v. Baltimore, 7 Pet. 243; Spies v. Illinois, 123 U. S. 131, 8 Sup. Ct. Rep. 21. Therefore the judgment of the circuit court denying the writ of *habeas corpus* is affirmed.

NOTE.—The same act may well be an offense against two different sovereigns, as where in one of the States of the Union a cheat is perpetrated by means of counterfeit coin, the State may punish the swindle under its general jurisdiction, and the federal government equally has jurisdiction under its power of commercial regulation. United States v. Marigold, 9 How. 560; Fox v. State, 5 How. 433; Sizemore v. State, 3 Head, 26; Jett v. Com., 18 Gratt. 933. See also State v. Bergman, 6 Oreg. 341; United States v. Amy, 14 Md. 149. And it has been held that inasmuch as the laws of a country, and more particularly its criminal laws, have no force beyond its territorial limits, the conviction and punishment of the accused in one sovereignty is no bar to his conviction and punishment in another, in which the offense was originally committed. Phillips v. People, 55 Ill. 433, citing State v. Brown, 1 Hayw. 116; United States v. Amy, 14 Md. 149, note; Com. v. Andrews, 2 Mass. 14; Com. v. Greene, 17 Mass. 540. In the Illinois case, the defendant was indicted for an assault alleged to have been committed upon a boat attached to the east bank of the Mississippi river, in Rock Island county, and filed a special plea in bar that he had been tried and convicted of the same assault by the Iowa court in Muscatine county. The court sustained a judgment overruling the plea and convicting the defendant on the ground that, even if he were convicted of the same assault by the Iowa court, it was not *in law* the same offense, citing Freeland v. People, 16 Ill. 380.

There seems to be but little room for doubt that at common law the place where the blow was given is to be regarded as the place of the crime. Green v. State, 66 Ala. 40; State v. Gessert, 21 Minn. 369; State v. Kelly, 76 Me. 331; State v. Bowen, 16 Kan. 475; United States v. Guiteau, 47 Am. Rep. 247, 261, note; Kiley v. State, 9 Humph. 646; State v. Dunkley, 3 Ired. 116; Coombe's Case, 1 East, P. C. 367; Com. v. Gill, 6 Cal. 637; Grosvenor v. St. Augustine, 12 East, 244. But s

Stoughton v. State, 13 Sm. & M. 255; Com. v. Linton, 2 Va. Cas. 205. And this rule has sometimes been re-enacted by statute. Hunter v. State, 4 N. J. L. 495.

But, except by virtue of statutory provisions, the place of the death has no jurisdiction. United States v. McGill, 4 Dall. 427, 1 Wash. C. C. 446; United States v. Armstrong, 2 Curtis, 446; *In re* Doig, 4 Fed. Rep. 193. See also State v. Brown, 1 Hayw. 116, where it was held that one who stole a horse in another State and carried it into North Carolina, was not guilty of the felony there; that the felonious taking in one State and the taking continued into another, cannot be regarded as a felonious taking in the latter. Such a statute has been enacted in a number of States providing that in cases of homicide the county should have jurisdiction where the death occurred. Hutch. Code Miss. 314; Riggs v. State, 26 Miss. 51; Turner v. State, 28 Miss. 684; Stoughton v. State, 13 Sm. & M. 255, 5 Stat. S. Car. 231; State v. Toomer, Cheves, 106.

The doubt expressed in the principal opinion as to the validity of the statute is not without support. The English Court of Criminal Appeal declined to enforce a similar enactment (2 Geo. II, ch. 21, 9 Geo. II, ch. 31), where the defendant and his victim were both foreigners, and the blow was given upon a foreign ship on the high seas, though the death took place in Liverpool. The court say that the section ought not to be so construed as to make a homicide cognizable before the courts of the country by reason of the death occurring there, which would not have been so cognizable in case the death had ensued at the place where the blow was given. Reg. v. Lewis, 7 Cox, C. C. 277, Dears & B. 182. See also Nga Hoong v. Reg., 7 Cox, C. C. 489. But where the blow was given by a foreigner on board a British ship, it was held that he owed allegiance to the law of England, and the English courts would take jurisdiction under that statute. Reg. v. Lopez, 7 Cox, C. C. 431. See also Reg. v. Bjornsere, Leigh & C. 545. In State v. Carter, 27 N. J. L. 499, the New Jersey Supreme Court said of a similar statute, that it could not believe that the legislature "intended to embrace cases where the injury was inflicted within a foreign jurisdiction, without any act done by the defendant within our own. Such an enactment upon general principles would necessarily be void; it would give the courts of this State jurisdiction over all the subjects of all the governments of the earth, with power to try and punish them if they could by force or fraud get possession of their persons, in all cases where personal injuries are followed by death. An act, to be criminal, must be alleged to be an offense against the sovereignty of the government. This is of the very essence of crime punishable by human law. How can an act done in one jurisdiction be an offense against the sovereignty of another? All the cases turn upon the question where the act was done. The person who does it may, when he does it, be within or without the jurisdiction, as by shooting or sending a letter across the border; but the act is not the less done within the jurisdiction because the person who does it stands without." As for instance, in the case of a conspiracy, when the defendant assists without being in the State. Thus, in Hatfield v. Com., 12 S. W. Rep. 309, where defendant, the leader of a party of men who had crossed over the boundary line between Virginia and Kentucky for the purpose of murdering certain prisoners in their hands, remained with his gun on the Virginia side of the line, two or three hundred yards distant, ready and near enough to give aid should there be any attempt to rescue the prisoners, and who, after the murder, administered an oath of secrecy to each of the party, the court held the defendant guilty, though he was out of State where the murder was committed, and sustained a conviction. See also State v. Moore, 26 N. H. 448; Com. v. Corlies, 3 Brewst. 575. The Massachusetts court takes a different view. In Com. v. Macloon, 101 Mass. 1, cited in the principal opinion, a citizen of Maine and a British subject, both of whom were foreigners as regards the criminal laws of Massachusetts, were convicted of murder under a statute similar to the West Virginia law, where the blows were given on board a British ship upon the high seas, and the victim died on shore within the State. See also Tyler v. People, 8 Mich. 320; People v. Tyler, 7 Mich. 161; Bromley v. People, 7 Mich. 472.

The case of State v. Kelly, 76 Me. 331, cited in the principal opinion, is not precisely in point in this discussion. The terms of the statute in that State were very similar to the English, Massachusetts and West Virginia laws, and provided for cases where the wound is inflicted "on the high seas or without the State, whereby death ensues within the State." In that case the wound was inflicted in Fort Popham, a United States fort, erected on land purchased for a fort with the consent of the legislature, and over which congress has the power under the constitution to exercise exclusive legislation. Const. U. S. art. 1, § 7, cl. 17.

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St. Louis, Mo.

BOOK REVIEWS.

MILLER'S LECTURES ON THE CONSTITUTION OF THE UNITED STATES.

The legacy left to the people of the United States by Justice Miller, in the shape of these lectures on constitutional law, may be said in one sense to be the result of the limited allowance in the shape of compensation made to a justice of the Supreme Court of the United States by the government.

It is well known that during life, Justice Miller was able to accumulate nothing out of his salary as a justice, and that he died leaving comparatively nothing. It is probable that these lectures were in part delivered in order to increase his income. In one point of view therefore, we may be said to be indebted to the parsimony of the United States Government for these posthumous treasures.

Of the twelve lectures embraced in this volume, all but two were written for the purpose indicated, and were read by him before a law school in the City of Washington, in the years 1889 and 1890. The history of the life of Justice Miller, was indeed a remarkable one. He was educated for the profession of medicine and at a period of life when most men have become settled in their pursuits, he began the study of law. His advantages and facilities in that direction were but limited, and it is likely that his exceptional success as a lawyer and a jurist were due more to his native common sense and a thorough understanding of the elementary principles of law than to wide reading or extensive knowledge. A remarkable feature of his life, was the fact of his elevation to the highest bench of the United States, after a comparatively short service as a practitioner. He was not long upon the bench, when he was called upon to declare his opinion in perhaps one of the most important questions which had arisen before that bench. This

was in the Louisiana slaughter-house case, which grew out of an act passed by the legislature of Louisiana for the purpose of regulating the business of slaughtering animals for food, within the limits of the City of New Orleans. As this end was sought to be accomplished in the act by the granting of an exclusive right of killing animals within those limits, to a corporation, the butchers of the city brought suit to enjoin the corporation from exercising the right on the ground that the legislature had, by the creation of a monopoly, invaded their rights and thus infringed the new amendments. As is well known, the court was almost equally divided upon the question, four of the judges holding one way, and five, among whom was Justice Miller, the other. It is probably true and we are told that Justice Miller himself so believed, that his opinion in the above case was the most important act of his judicial life, and at once put him forward as an able expounder of the principles of the constitution, a reputation which was strengthened by later able opinions upon constitutional questions and which remained to the end of his life.

The twelve lectures which form the contents of this work are upon the subjects, respectively, of the framing of the constitution, the principles of construction of the constitution, the executive branch of the government, the separate powers of the senate and the house of representatives, the power of taxation, naturalization and citizenship, the judicial power of the United States, the Supreme Court of the United States, regulation of commerce among the States, the right of trial by jury, impairment of the obligation of contracts and limitations upon the powers of States.

It would be impossible within the scope of this review to critically analyze or call especial attention to each of these lectures. It is sufficient to say that they embody in vigorous language and pleasing style, the fundamental principles underlying the constitution and constitutional questions.

The student will find nowhere, a more interesting or abler exposition of the principles upon which our constitution rests, and by which it should be expounded. Each lecture is followed by an exhaustive note, prepared by the editor, Mr. J. C. Bancroft Davis, the reporter of the Supreme Court of the United States. He states in the preface: "I have endeavored to present this work to the profession and the public in a manner worthy of the great judge, who has passed away, so far as the limited time given me and my duties to the court would allow. If there be any serious shortcoming, no one will regret it more than I. It has been to me a labor of love to follow in the footsteps of one whose great intellect, probity, manliness and directness of purpose were recognized by the whole nation; whose amiable character was admired by all who knew him; and whose friendship I was permitted to enjoy for nearly a quarter of a century."

That he has accomplished his task in an able manner and with a due regard to the high reputation of the author, all will agree. The notes are vigorous, able, full and clearly explanatory of the text. He has also prepared a supplemental chapter, containing references to minor provisions of the constitution not discussed in the lectures. There is also an appendix containing a collated copy of the constitution with full reference to the cases in which it has been construed or discussed and also copies of the articles of confederation and of Randolph's and Pinckney's drafts for a constitution.

The mechanical preparation of the book is in every way creditable to the publishers, Banks & Brothers, New York.

WAMBAUGH'S STUDY OF CASES.

The aim of this volume is as stated by the author, to teach students the methods by which lawyers detect *dicta* and determine the pertinence and weight of reported cases. The methods by which cases are studied are explained at the beginning of the work. The remainder of the volume is devoted to cases for study. The intention is that the student shall "state the cases, discover the doctrines of law established by them, compose head-notes, point out *dicta*, make all possible comments as to the weight of the decisions, and compile a digest." In chapter 1 the author treats of how to study cases. In chapter 2, how to find the doctrine of a case, and within this, the court's duty to consider the actual case, the necessity of uniformity, the words of the court, the effect of the court's ignoring possible doctrines. Chapter 3 considers the question of the study of cases involving several questions, and following chapters are intended to show how to write a head-note and how to criticise cases.

This succinct statement of the contents of the main part of the work will enable the reader to comprehend its scope and character. As a book for students it is undoubtedly of value and some of the suggestions and views of the author might well be read by practitioners. The book is written in a pleasing style and in plain language. The selection of cases upon which the student is expected to do his work is very good, embracing a selection of cases on contracts and on torts, both English and American authorities being given. The work has about 300 pages and is beautifully printed. It has also a good index. It is published by Little, Brown & Company, Boston.

PINGREY ON CHATTEL MORTGAGES.

It can be said of this work that it is eminently practical and therein is its chief merit. Besides it undertakes to state the present law, statutory and otherwise of the different States upon the subject of chattel mortgages. There is no attempt at literary style, but the propositions are laid down in plain and satisfactory language. The fact that much of its subject is of statutory character demanded of the author more than usual care and research. This seems to have been given.

The book treats of the nature and requisites of the contract of a chattel mortgage, of registration of the instrument, of contracts in the nature of chattel mortgages in fraud of third persons, and of the rights of parties before and after default.

Within these main heads are discussed the many underlying principles of the subject. The citation of authorities, both of decisions and of statutes are abundant and an examination of the work impresses us with the care and diligence of the author, whose capacity for the effective and interesting discussion of the law has for many years been revealed to the readers of this journal.

The book has a first class index and is published by F. D. Linn & Company, Jersey City, N. J.

QUERIES.

QUERY NO. 6.

In 1885 A sold and delivered groceries for X's family at his request, and in 1886 X gave his note for same, which note was transferred to A's wife (note due in 30 days). In 1891 X, the husband, took up the old note and gave to A's wife a new note, and which new note is past due, and suit is brought thereon against X and his wife, and on the ground that this is a debt for

which the community property of both husband and wife is liable. The Washington statute, § 2407, Code of 1881, makes the property of both husband and wife liable for family expenses. The wife never signed the notes. Is not the debt outlawed as to the wife? Plaintiff alleges the debt is due for groceries, etc., in addition to setting out the note. Cite authorities.

H. F. N.

QUERY NO. 7.

B owned lot 20 and put it in the hands of D, his son-in-law, to sell. D sold to J for $2,800, of which $1,800 was paid in cash, and for the balance J gave his note for $1,000 to D, and also a mortgage to D on the lot to secure the note. The note and mortgage were executed in 1886 and payable in three years. J conveyed the lot to M, subject to the mortgage. April 22, 1891, two years after the note was due, B, for a valuable consideration, gave a written release of the mortgage to M, reciting the above facts as to D, and that D was his agent. Before M put the release from B on record, E recorded an assignment of the mortgage and note to him from D, but this assignment was dated subsequent to the release to M from B. E brings a suit to foreclose against J and M, claiming to be an innocent purchaser for value. Query: Can E have lot 20 sold to pay this mortgage?

W. G. R.

QUERY NO. 8.

W S was a brakeman on the S. T. X. R. R. Co. In making a coupling of cars on S. T. X. R. R. his arm was injured. He was taken by fellow-servants to the office of Dr. Q, who was employed generally to attend to injured persons in employ of the railroad company. W S refused to take chloroform unless Dr. Q promised not to amputate his arm. Dr. Q made such promise. While W S was unconscious from effects of chloroform Dr. Q cut off the arm. It was unnecessary so to do to save life; the arm could have been saved with proper care and surgical treatment. Can W S recover from S. T. X. R. R. Co. for the tort of Dr. Q in cutting off his arm without W S's consent, and in violation of the doctor's promise not to do so? Cite authorities.

D. H. C.

QUERIES ANSWERED.

ANSWER TO QUERY NO. 5.

[*To be found in Vol. 34, Cent. L. J. p. 260.*]

Case: Z gives a mortgage for $1,000 to A, who fails to record it. Subsequently he gives a second mortgage to B, who has actual notice of A's unrecorded mortgage, to secure the same amount. This mortgage is duly recorded. Z then executes a third mortgage for the same amount to C, who has no notice of the unrecorded mortgage to A. B forecloses. The land sells for $1,000. The fund is in court. How will it be distributed?

B, being first on the record, cannot be prejudiced by any subsequent incumbrance; but having actual notice of A's prior claim, he must be deemed to have contracted with reference to it, for otherwise he would be guilty of fraud, which will never be presumed. B, therefore, has a claim only on the surplus which remains after deducting the amount of A's debt. In case the land brings but $1,000 there is no surplus, and consequently B takes nothing. Nor can C claim the fund. As to him A's mortgage is void, but he can enforce his claim against the fund only for the amount he would have received had B's debt been paid in full, because having notice of the debt, he must be held to have contracted with reference to it. In the present case, however, he would have received nothing if B's debt had been paid in full. He therefore takes nothing. It follows that as neither B nor C can claim the fund, it must be given to A, the first mortgagee. In case the property brings $2,000 or less, B would take all over $1,000; C would receive the same amount, and A would take what remains, if anything. If the property brings more than $2,000, B and C would each be paid in full, and the remainder given to A.

The rule seems to be a just and equitable one. In each case B and C have all they contracted for; no honest man can ask for more. If A suffers anything, it is because of his negligence in not recording his mortgage. I know of no authorities on the subject.

St. Louis. W. B. HALE.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCOUNTING—Costs.—Where, in an action to redeem, the decree in complainant's favor requires defendant to account, the costs of the accounting should be charged to defendant.—*Crawford v. Osmun*, Mich., 51 N. W. Rep. 856.

2. ACTION—Joinder.—An action by the vendor in a contract for the sale of land, against the vendee and another, to vacate a groundless attachment levied on the land by the latter, through collusion with the vendee, and to enable him to retain possession, which seeks also to foreclose the contract and recover back the premises free from incumbrances, does not improperly join two causes of action.—*Ramash v. Scheuer*, Wis., 51 N. W. Rep. 330.

3. ADVANCEMENT—Proof of Intention.—Where a conveyance is made by a father to his children in consideration of one dollar, or a very inadequate consideration, and for the further consideration of natural

love and affection, the conveyance so made is *prima facie* an advancement to the grantees.—*McClanahan v. McClanahan*, W. Va., 14 S. E. Rep. 419.

4. ADVERSE POSSESSION. — In order to obtain title by adverse possession without color of title, it is not necessary that the land shall be actually inclosed.—*Sauers v. Giddings*, Mich., 51 N. W. Rep. 265.

5. ADVERSE POSSESSION.— The word "hostile," when applied to the posession of an occupant of real estate holding adversely, is not to be construed as showing ill will, or that he is an enemy of the person holding the legal title but means an occupant who holds and is in possesson as owner, and therefore against all other claimants of the land.—*Ballard v. Hansen*, Neb., 51 N. W. Rep. 295.

6. ADVERSE POSSESSION—Color of Title.—A deed purporting to convey land in fee under a void sale, made under a deed of trust, by a trustee having no legal authority, gives color of title. — *Swann v. Thayer*, W. Va., 14 S. E. Rep. 423.

7. APPEAL—Jurisdiction. — Upon a bill praying that defendant be declared to hold title to certain land in trust for complainant and alleging that complainant is entitled to possession of such land, a decree which finds that defendant holds such land in trust, enjoins him from interfering with the complainant's possession of the same until the further order of the court, and provides that either party may apply to the court for further relief, is not a final decree from which an appeal will lie, since it does not definitely determine the complainant's right to possession of the land.—*Sholty v. Sholty*, Ill., 29 N. E. Rep. 1041.

8. APPEAL —Review.—Where an action is tried by the court without a jury, and a motion for new trial on the ground of the insufficiency of the evidence to sustain the findings is overruled, an appeal from the judgment does not present the evidence for review in this court unless error is assigned in the overruling of the motion for new trial.—*Pierce v. Manning*, S. Dak., 51 N. W. Rep. 332.

9. APPEAL—Review of Evidence.— A jury is, from the very nature of its functions, the rightful and legitimate branch of the court to determine the facts in a case submitted to it. It is the most competent to test the credibility which is to be attached to the witnesses, and to weigh their evidence, and it must be a glaring and palpable case of injustice which will induce an appellate court to interfere and disturb the finding of a jury.—*Stone v. Crow*, S. Dak., 51 N. W. Rep. 335.

10. APPEAL—Statement of Facts.—A statement of facts on appeal cannot be settled by the trial judge after he has gone out of office.—*Gunderson v. Cochrane*, Wash., 28 Pac. Rep. 1105.

11. APPEAL-BOND— Validity. — The statutory undertaking given on appeal will operate as a stay of execution; and, where another undertaking is given for the purpose of staying the execution, it is without consideration, and cannot be enforced, either as a statutory or common law obligation, against the sureties thereon, though the judgment was for the foreclosure of a chattel mortgage on perishable property, and the obligee, relying on such undertaking, refrained from disposing of such property pending the appeal, and was thereby damaged, as the statutory undertaking did not contemplate a stay of sale of the property.—*Powers v. Chabot*, Cal., 28 Pac. Rep. 1070.

12. APPEAL FROM JUSTICE COURT—Amendment.—If a party during trial of an appeal from a justice is entitled to amend his pleadings, that right cannot be made to depend solely on whether the adverse party is then ready to proceed with the trial. If such amendment would be a surprise to the other party, a continuance will obviate that objection.—*Powell v. Love*, W. Va., 14 S. E. Rep. 405.

13. APPELLATE COURT — Title to Land. — An appeal from the circuit court in a forcible entry and detainer case, commenced in a justice court, lies to the appellate court, as title to land does not come in question in actions of forcible entry and detainer. — *Duckworth v. Mosier*, Ind., 29 N. E. Rep. 1057.

14. ARBITRATION AND AWARD — Oath of Arbitrators.—On a submission to arbitration, by a city and the owner of property taken for street purposes, of the amount of compensation therefor, under Rev. St. art. 46, which requires that the arbitrators and umpire shall be sworn, where their oaths are waived by the attorney for the city, but his authority to waive them is not shown, judgment will not be entered on the award.—*Anderson v. City of Ft. Worth*, Tex., 18 S. W. Rep. 483.

15. ASSIGNMENT FOR BENEFIT OF CREDITORS.—In an action by an assignee for benefit of creditors, to set aside as fraudulent a conveyance of land by the assignor to his wife, the court found that the conveyance was in pursuance of a post-nuptial agreement, and for moneys loaned and advanced by the wife to the husband: *Held*, that she should be charged with the difference between her loans and advances, with interest, and the value of the property, and with moneys paid by her husband for her, appearing on his books as part of the same account, and that the total amount decreed against her should be made a lien on the land conveyed.—*Joslin v. Goebel*, Mich., 51 N. W. Rep. 354.

16. ASSIGNMENT FOR BENEFIT OF CREDITORS—Execution.—A judgment creditor who places an execution in the sheriff's hands, and has the same levied on the debtor's personal property after the latter has executed, delivered, and caused to be recorded a general assignment for the benefit of creditors, but before the assignee has taken possession of the property, acquires no lien on the property superior to the title of the assignee, where there is no actual fraud in the assignment, and the assignee is proceeding with all due diligence to take possession of the assigned property.—*Lowe v. Kane*, Ill., 29 N. E. Rep. 1036.

17. ATTACHMENT—Affidavit—Mistake.—An affidavit for attachment which names the several debts upon which the claim is founded, and the rate of interest, and the time it has been running, is not fatally defective because a small mistake is made, through a miscalculation of the interest, in the amount alleged to be due. — *Rainwater Boogher Hat Co. v. Oneal*, Tex., 18 S. W. Rep. 570.

18. ATTACHMENT—Equitable Interest in Land.—Under Code Civil Proc. § 645, the interest of defendant in possession of land under a contract of purchase on which he has made partial payments, and under which he is entitled to a conveyance on completing his payments, may be levied on by virtue of an attachment, notwithstanding, under section 1258, such interest is not bound by the docketing of a judgment.—*Higgins v. McConnell*, N. Y., 29 N. E. Rep. 976.

19. ATTACHMENT — Exemption of Specific Articles.—Const. art. 9, § 2, do not confer on the debtor the right to claim exemptions out of the proceeds of the property after it has been sold under an order of attachment pending the litigation, when the debtor has had an opportunity to claim his exemptions in specific articles before the sale.—*Surratt v. Young*, Ark., 18 S. W. Rep. 539.

20. ATTORNEY AND CLIENT—Lien.—An attorney has no lien against land for prosecuting a suit to recover it for his client, or for defending a suit to recover it from his client, or to subject it to a debt or claim.—*Fowler v. Lewis' Adm'r*, W. Va., 14 S. E. Rep. 447.

21. BAIL-BOND—Forfeiture.—Rev. St. 1881, § 1718, which provides that, on the forfeiture of a recognizance in a criminal case, the bail may, at any time before final judgment on the recognizance, surrender his principal, and be discharged, has no application in cases where the State secures the arrest of the principal without any assistance from the bail.—*State v. Warwick*, Ind., 29 N. E. Rep. 1142.

22. BAILMENT—Failure to Deliver.— In an action by a bailor against a bailee for failure to surrender on demand a certificate of deposit, after it had been attached by creditors of the bailor's husband, the bailee, under allegations that the money represented by the certificate belonged to bailor's husband, and was deposited

by her as his agent, cannot maintain that the money was given to the bailor by her husband to defraud his creditors; since, under Civil Code, § 3442, providing that the question of fraudulent intent is one of fact, and not of law, fraud must be pleaded.—*Wetherly v. Straus*, Cal., 28 Pac. Rep. 1045.

23. CARRIERS—Limiting Liability.— A common carrier of goods may by contract limit its common law liability as an insurer for damages not caused by its negligence. — *Indianapolis, D. & W. Ry. Co. v. Forsythe*, Ind., 29 N. E. Rep. 1138.

24. CARRIERS—Passengers— Alighting.—Where a passenger, because of his being asleep, is carried past his station, and at the next station attempts to alight without notifying the conductor, and neither the conductor nor the other train hands know that he intends to alight, and he is thereby injured, the carrier is not liable.—*Nicholas v. Chicago & W. M. Ry. Co.*, Mich., 51 N. W. Rep. 364.

25. CARRIERS—Passengers—Damages.— Where a passenger on a railroad train fell asleep at night, and was carried past his destination, it was not the duty of the company to carry him to the next station, unless he paid or offered to pay his fare to such station; and, if the conductor had no reason to believe that injury would result therefrom, he had a right to put the passenger off. — *Texas & P. Ry. Co. v. James*, Tex., 18 S. W. Rep. 589.

26. CARRIERS — Passengers — Negligence.— A person who enters a railroad car to assist a lady to a seat cannot demand that the train be held for the full length of time usually required for passengers to get on or off at that place, but only that it be held long enough for the said person to get off, upon notice to the trainmen that he desires to do so. — *Lawton v. Little Rock & Ft. S. Ry. Co.*, Ark., 18 S. W. Rep. 543.

27. CHAMPERTY— Maintenance.—A person having, or honestly believing he has, an interest in the subject of litigation in a suit may lawfully assist in payment of costs and expenses in the defense or maintenance of such suit.—*Lewis v. Broun*, W. Va., 14 S. E. Rep. 444.

28. CHATTEL MORTGAGES.—Where mortgaged personal property remains in the possession of the mortgagor, and the mortgage is not filed, it is by statute made presumptively fraudulent as to creditors of the mortgagor who become such without notice of the mortgage. The mortgagor becoming insolvent, a receiver for the benefit of such creditors may dispute the validity of the mortgage without proof of actual fraud.—*Baker v. Pottle*, Minn., 51 N. W. Rep. 383.

29. CHATTEL MORTGAGE — Assignment. — Where a mortgage of personal property and the note thereby secured, are embodied in the same instrument, an assignment indorsed thereon, and signed by the mortgagee, conveys to the assignee the legal title to the mortgaged property, and the assignee may sue for its recovery in his own name. — *Gaford v. Lofton*, Ala., 10 South. Rep. 505.

30. COLLATERAL INHERITANCE TAX—Payment.—Where a testatrix devised her estate in 1849 to collateral heirs, and the collateral inheritance tax, as the law then stood, was payable, both on life-estates and estates in remainder, at the expiration of a year, a presumption of payment arises not only from the lapse of time, but from the presumption that the executor has done his duty in that regard.— *In re Swann's Estate*, Pa., 23 Atl. Rep. 599.

31. COMPOSITION WITH CREDITORS— Consideration.— A composition deed, executed by a debtor and his creditors in due form, operates as a settlement of the original claims of such creditors, and supersedes the cause of action thereon. The rights and remedies of the parties are thereafter determined by the new agreement. Each creditor has the undertaking of the other creditors as a consideration for his own undertaking, and all parties to the deed are mutually bound. —*Brown v. Farnham*, Minn., 51 N. W. Rep. 377.

32. CONSTITUTIONAL LAW — Exemption of City from Garnishment. — The exemption of the city of Dallas from garnishment proceedings, by section 169 of the city charter, passed under Const. art. 11, § 5, which authorizes charters of cities having more than 10,000 inhabitants to be granted by special act, does not conflict with Const. art. 3, § 56, which forbids, "except as otherwise provided in this constitution," the enactment of any local or special law for certain specified purposes, including the changing of "methods for the collection of debts or the enforcing of judgments."— *City of Dallas v. Western Electric Co.*, Tex., 18 S. W. Rep. 552.

33. CONSTITUTIONAL LAW— Foreign Corporations.—A State may impose upon foreign corporations (including those organized under the laws of other States) any conditions it may see fit as a prerequisite to their doing any business within its borders; and Act N. Y. May 26, 1881, exacting from all corporations doing business in the State a tax proportioned to the total amount of their capital stock, without regard to what part thereof is employed within the State, or to the amount or kind of business done there, cannot be impeached on the ground of repugnancy to any provisions of the federal constitution. — *Horn Silver Min. Co. v. People of State of New York*, U. S. S. C., 12 S. C. Rep. 403.

34. CONSTITUTIONAL LAW — Special Privileges. — Act Feb. 20, 1889, which grants to companies, corporations, or voluntary associations organized under the laws of the State for the purpose of drilling and mining for petroleum or natural gas, and furnishing the same to patrons within the State, the right to condemn and appropriate land for the purpose of laying their pipes, is within the legislative power to grant the sovereign right of eminent domain, and is not in conflict with Const. art. 1, § 23, prohibiting a grant to any citizen or class of citizens of privileges or immunities which, upon the same terms, shall not equally belong to all citizens. —*Consumers' Gas Trust Co. v. Harless*, Ind., 29 N. E. Rep. 1062.

35. CONSTITUTIONAL LAW—Title of Acts.—The legislature passed an act, entitled "An act to incorporate the A. & D. N. Railroad Company," which located the route, provided for incorporation, regulated subscriptions to stock, and authorized counties through which the road extended to subscribe to the stock by issuing bonds therefor at a certain rate per mile, after first submitting the question to a vote of the people: *Held*, that such act embraced only such objects as were connected with and in furtherance of its main general object,— the incorporation of a railroad company,—and was not unconstitutional, under Const. art. 5, § 15, as embracing more than one object.— *Powell v. Supervisors of Brunswick County*, Va., 14 S. E. Rep. 543.

36. CONTRACT—Actions on—Evidence.—Where a written contract is declared on, it must be put in evidence, or plaintiff will not be entitled to recover.—*Higman v. Hood*, Ind., 29 N. E. Rep. 1141.

37. CONTRACT—Consideration—Forbearance of Suit.— An agreement by the payee of a note, after maturity, to forbear suit thereon, though for an indefinite period, is a sufficient consideration for the signing of the note by a third party.—*Traders' Nat. Bank of San Antonio v. Parker*, N. Y., 29 N. E. Rep. 1094.

38. CONTRACT—Quantum Meruit—Partial Performance. In an action to recover on a contract for services performed, where the adverse party has retained the benefits thereof, he will be liable for the value of such services in excess of any damages he may have sustained by a failure to fully perform the contract.— *West v. Van Pelt*, Neb., 51 N. W. Rep. 313.

39. CONTRACT — Subscription — Corporation.— A subscription for the payment of certain sums of money to a contemplated corporation, to be formed for a purpose from which the subscribers were to derive benefits, may be enforced by the corporation when formed; and no formal acceptance of the subscription nor notice of such acceptance is necessary to make it binding.—*Richelieu Hotel Co. v. International Military Encampment Co.*, Ill., 29 N. E. Rep. 1044.

40. CONVERSION — Who can Maintain. — Conversion cannot be maintained for a stock of liquor by one who does not own it or have an interest therein, though the business is carried on in his name for the purpose of saving the real owner the expense of a wholesale license.— *Epstein v. Meyer Bros. Drug Co.*, Tex., 18 S. W. Rep. 592.

41. COPYRIGHT — Infringement. — The copyright of a book describing a new system of stenography does not protect the system, when considered simply as a system apart from the language by which it is explained, so as to make the illustration by another of the same system in a different book, employing totally different language, an infringement.— *Griggs v. Perrin*, U. S. C. C. (N. Y.), 49 Fed. Rep. 15.

42. CORPORATIONS—Consolidation.—The consolidation of a New York railroad corporation with companies organized under the laws of other States, in accordance with the provisions of Laws 1869, ch. 917, is not an incorporation under the laws of New York, within the meaning of Laws 1886, ch. 143, requiring the payment of an organization tax. — *People v. New York, C. & St. L. R. Co.*, N. Y., 29 N. E. Rep. 959.

43. CORPORATIONS—Contracts—Ultra Vires.—Where a corporation executed two non-negotiable notes and two mortgages, the consideration therefor being the promise of the mortgagees to advance money and deliver lumber as needed and ordered by the corporation for the improvement of the mortgaged property, and the money was advanced and the lumber delivered, and there was no fraud on the part of the mortgagees, such indebtedness was not fictitious.— *Underhill v. Santa Barbara Land, Bldg. & Imp. Co*, Cal., 28 Pac. Rep. 1049.

44. CORPORATIONS — Dissolution. — The failure of a manufacturing corporation to make an annual report of the amount paid on its capital stock, as required by the manufacturing act of 1848, § 12, is cause for dissolving the corporation, under Code, § 1798, which declares that a corporation may be annulled whenever it offends against any provision of an act under which it was created, although the only penalty stated in said section 12 is that, in case of its violation, all the trustees of the corporation shall be liable for the corporate debts.— *People v. Buffalo Stone & Cement Co.*, N. Y., 29 N. E. Rep. 947.

45. CORPORATIONS—Receivers — Stock.—An order appointing a receiver to take charge of the "whole property" of an insolvent corporation will empower him to sue for and recover unpaid subscriptions to the stock of the corporation. — *Showalter v. Laredo Imp. Co.*, Tex., 18 S. W. Rep. 491.

46. COUNTER-CLAIM — Tort and Contract.—When an action, brought under the New York Code, sounds partly in contract and partly in tort, a counter-claim may be maintained for a balance due under the contract; and the fact that the evidence is directed mainly to proof of the tort does not deprive the defendant of the benefit of the counter-claim. — *Seaman v. Slater*, U. S. C. C. (N. Y.), 49 Fed. Rep. 37.

47. COUNTIES—Board— Contractor's Bond.—The laws of Indiana confer on the county board the power to accept and settle for gravel roads constructed by contractors, and no action will lie on the bond of such contractor, from whom such a road has been accepted, so long as the settlement between him and the board remains unimpeached. — *Linville v. State*, Ind., 29 N. E. Rep. 1129.

48 COUNTIES—Guaranty of County Judge.—A county judge has no power to bind the county by an order guarantying payment for goods to be sold to a person who has a contract for the construction of a turnpike. - *Dickerson Hardware Co. v. Pulaski County*, Ark., 18 S. W. Rep. 462.

49. COUNTY — Coroner's Fees.— Where an inquest is necessary to ascertain the cause of a death, the coroner has authority to call in a physician to make an autopsy, and the county is liable for reasonable compensation therefor, under Mansf. Dig. §§ 695, 696, providing that a coroner shall, when holding an inquest, inquire into the cause of death, and shall use "all proper means" and "all proper witnesses" to ascertain the truth.— *St. Francis County v. Cummings*, Ark., 18 S. W. Rep. 461.

50. COUNTY-SEAT — Location—Injunction.—A court of equity will, on the application of resident tax-payers, restrain public officers from doing an illegal act, where the effect of such act, if consummated, would be a waste of public funds raised by taxation.— *Solomon v. Fleming*, Neb., 51 N. W. Rep. 304.

51. COURTS—Powers of Circuit Judges.—There is nothing in the constitution forbidding the legislature to authorize a circuit judge to make an order in his own circuit in a matter pending in another circuit, whose judge is absent; and chapter 79, Laws 1890, so providing, is not invalid on that account.— *Holden v. Haserodt*, S. Dak., 51 N. W. Rep. 340.

52. CRIMINAL EVIDENCE — Dying Declarations. — The fact that a dying declaration is untrue, in that it includes among the assailants one who could not have been present, does not affect its admissibility against the others, but only its credibility.— *White v. State*, Tex., 18 S. W. Rep. 462.

53. CRIMINAL LAW — Crimes of Wife — Coercion by Husband.—On trial of a woman for a murder shown to have been committed by herself and husband, the court properly charged that the jury should consider defendant a *feme sole*, and properly refused to charge that, unless defendant acted willingly, she should be acquitted, the presumption that the wife acted under the coercion of the husband not being allowable in cases of homicide.— *Bibb v. State*, Ala., 10 South. Rep. 506.

54. CRIMINAL LAW—Cross examination.—A defendan in a criminal prosecution is not confined in the cross-examination of the State's witnesses to matters brought out in their examination in chief, but may interrogate them for the purpose of contradicting another witness, who has previously been examined; and if this right is denied him the error is not cured by the fact that he afterwards makes the witnesses his own, and causes them to be examined on his own behalf.— *State v. Howard*, S. Car., 14 S. E. Rep. 481.

55. CRIMINAL LAW—Homicide—Self-defense.—Where a person goes to a house merely for the purpose of securing a place to sleep, and, not finding the husband, lies down, by permission of the wife, in an adjoining room, where he remains until 2 o'clock in the morning, when the husband returns, such conduct, though it may have been improper, was not such as could reasonably have been expected to provoke serious difficulty; and if, therefore, the husband assaults him, and he, in order to save his own life, is obliged to take that of the husband, the killing is justifiable.— *Franklin v. State*, Tex., 18 S. W. Rep. 468.

56. CRIMINAL LAW — Larceny.—On a prosecution for larceny, where the evidence shows that defendant struck the hand of a person who was showing him money, but does not show whether he got the money, or merely knocked it to the ground, where it was lost, it is error to refuse to charge that defendant cannot be convicted unless he got the money into his hands or actual possession, since that only would constitute larceny.— *Thompson v. State*, Ala., 10 South. Rep. 520.

57. CRIMINAL LAW — Murder — Corpus Delicti.—In a criminal prosecution for murder in the first degree, where the *corpus delicti* cannot well be proved except by the introduction of evidence tending to show the defendant's guilty connection with the offense, *held*, that evidence tending to prove both the *corpus delicti* and the defendant's guilt may be introduced at the same time.— *State v. Davis*, Kan., 28 Pac. Rep. 1092.

58. CRIMINAL LAW — Murder—Malice.—The taking of human life by the use of a deadly weapon does not necessarily justify the inference that the killing was either willful, deliberate, or premeditated, but such inference may be warranted from the use of a deadly weapon, under certain circumstances.— *Power v. People*, Colo., 28 Pac. Rep. 1121.

59. CRIMINAL LAW—Poor Defendants.—Under Rev. St. 1881, § 260, it is error for a court to refuse to grant the application of a poor person who has reached his majority because his parents possess means with which they could hire counsel.—*Hendryx v. State*, Ind., 29 N. E. Rep. 1131.

60. CRIMINAL LAW — Principal and Accessory.—One indicted as principal merely can be convicted on evidence proving him guilty as principal in the second degree, if the facts be such as that the act by which the crime was perpetrated will, on established principles of law, be imputed to him as committed by himself through the agency of another. In such case, the distinction of degree is immaterial.—*Collins v. State*, Ga., 14 S. E. Rep. 474.

61. CRIMINAL LAW—Reasonable Doubt.—An instruction, in a criminal case, that a reasonable doubt of defendant's guilt is not the same as a probability of his innocence, but that such a doubt may exist when the evidence fails to establish a probability of innocence, is not objectionable on the ground that it is argumentative, or that the phrase "probability of innocence" is of such a character as to require explanation.—*Croft v. State*, Ala., 10 South. Rep. 517.

62. CRIMINAL LAW — Self-defense—Provocation.—Deceased called defendant a "liar," whereupon defendant struck or slapped him, but with no intention of provoking a difficulty. Thereupon they both drew pistols and fired: *Held*, that though deceased fired first, and defendant fired to save his own life, he was not entitled to the plea of self-defense; the difficulty having been provoked by him, though he may not have intended it. —*Polk v. State*, Tex., 18 S. W. Rep. 467.

63. CRIMINAL LAW—Solicitation to Commit a Felony.—Where a person solicits another to commit arson, and promises to give him money therefor, and offers him matches to use for that purpose, such person is guilty of a criminal offense, even though the offer is immediately repudiated.—*State v. Bowers*, S. Car., 14 S. E. Rep. 488.

64. CRIMINAL PRACTICE—Assault with Intent to Kill.—Where an indictment for assault with intent to kill charges the assault to have been made "unlawfully, feloniously, and with malice aforethought," the omission of those words in charging the intent will not be fatal.—*State v. Robinson*, Ark., 18 S. W. Rep. 541.

65. CRIMINAL PRACTICE—Grand Jury—Qualifications.—The fact that a member of the grand jury, who "actively assisted in finding a true bill" for larceny, was a son of the prosecutor, from whom the property was alleged to have been stolen, is no ground for quashing the indictment.—*State v. Sharp*, N. Car., 14 S. E. Rep. 514.

66. CRIMINAL TRIAL — Embezzlement—Amendment.—The right conferred upon the accused in a prosecution for a felony, by section 436 of the Criminal Code, to a copy of the indictment or information and one day to prepare for trial, is a substantial right, to deny which is error.—*Zink v. State*, Neb., 51 N. W. Rep. 294.

67. CRIMINAL TRIAL—Homicide—Verdict.—Where, on a murder trial, the court instructs the jury that a verdict of "guilty as charged in the indictment" will be followed by capital punishment, such a verdict, signed by each juror, fixes defendant's punishment at death, though the last juror's name is coupled with the words, "opposed to capital punishment."—*Harris v. State*, Miss., 10 South. Rep. 478.

68. CRIMINAL TRIAL — Larceny — Possession—Instructions.—On a trial for horse-stealing, the court erred in instructing the jury that if defendant at one time had the horse in his possession, and afterwards abandoned it, and does not account for his possession, such facts, if proven beyond a reasonable doubt, raise the presumption that defendant stole the horse; and that, in such case, if defendant does not in some reasonable way explain his possession to the satisfaction of the jury, the presumption of guilt becomes conclusive.—*Blaker v. State*, Ind., 29 N. E. Rep. 1077.

69. CRIMINAL TRIAL — Separating Witnesses. — In a criminal case, it is within the sound discretion of the court to allow a witness who was present at the trial, in violation of the rule requiring witnesses to be separated and kept out of the court-room, to testify.—*Carlton v. Commonwealth*, Ky., 18 S. W. Rep. 535.

70. DEATH BY WRONGFUL ACT — Damage.—Pain and suffering of deceased cannot be considered by the jury as an element of damages, in an action by an administrator to recover for the death of his intestate caused by the wrongful act of another.—*Dwyer v. Chicago, St. P. M. & O. Ry. Co.*, Iowa, 51 N. W. Rep. 244.

71. DECEIT IN PROCURING LOAN—Merger of Causes.—A company fraudulently induced to lend money on land in excess of its value may retain and enforce its security against the land, and at the same time maintain an action against the borrower to recover damages for the fraudulent representations.—*Union Cent. Life Ins. Co. v. Scheidler*, Ind., 29 N. E. Rep. 1071.

72. DEDICATION OF PUBLIC STREET.—After the fence along the line of a street had rotted, the owner set back and re-established it upon a line conforming to the prolongation of the street as widened, and, representing to his grantor that the strip thus excluded was within the street, demanded and received payment therefor from the latter: *Held*, that these facts constituted a dedication of such strip.—*Parisa v. City of Dallas*, Tex., 18 S. W. Rep. 568.

73. DEED—Acknowledgment by Wife.—Where a deed in plaintiff's chain of title purported to be acknowledged by the grantor and his wife, and the wife's acknowledgment was void, and it appeared that the land had been conveyed to the grantor alone, the deed was properly admitted; there being no necessity for the grantor's wife to join therein.—*Bassett v. Martin*, Tex., 18 S. W. Rep. 587.

74. DEED — Construction.—A deed of land to L and J, his wife, provided that it is "expressly understood that the premises are to be wholly and absolutely vested in the said J forever, in case" she outlives and survives her present "husband, [L]; but, in case she do not, then to be wholly and absolutely vested in L forever:" *Held*, that an equal and undivided interest in the land vested in L and J as husband and wife, during their joint lives, and the remainder in fee to the survivor of them.—*Bartholomew v. Murry*, Conn., 23 Atl. Rep. 604.

75. DEED—Redelivery.—The redelivery of a deed to the grantor, though accompanied by a parol agreement to re-convey, does not operate to revest the title in the grantor, or estop the grantee from afterwards asserting his title.—*Whisenant v. Gordan*, Ala., 10 South. Rep. 513.

76. DEED—Rescission—Fraud of Agent.—The fact that an agent is guilty of fraud, under Civil Code, § 1572, in making a promise which he has no intention of performing, and which he makes merely for the purpose of inducing a third person to execute a conveyance of land, does not render his principal guilty of fraud, if he accepts the conveyance without any knowledge of the contemplated fraud; and the grantor, therefore, is not entitled to rescission, but only to the enforcement of the promise.—*Schultz v. McLean*, Cal., 28 Pac. Rep. 1053.

77. DEED—Right of Way—Reservation.—A reservation in a deed of the "right of way through and over the carriage and alley way" to a stable, so long as it should be used as such, does not secure the right to use the whole of an 18-foot alley as laid out, but only as much thereof as is reasonably necessary for the purpose expressed, and the grantee may erect a building over the alley leaving an arched passage sufficient for such purpose. —*Grafton v. Moir*, N. Y., 29 N. E. Rep. 973.

78. DEED BY MARRIED WOMAN—Estoppel.—Under the provisions of the act of 1869 (Gen. St. 1878, ch. 69), in respect to the rights and contracts of married women, a married woman who unites with her husband in a conveyance of real estate with covenants, and expressly joins in and becomes a party to such covenants, is estopped thereby as if unmarried.—*Sandwich Manuf'g Co. v. Zellmer*, Minn., 51 N. W. Rep. 379.

79. DEED FROM HUSBAND TO WIFE.—A deed from a husband conveying land directly to his wife, though void at law and passing no title, is valid in equity to pass a substantial estate.—*Humphrey v. Spencer*, W. Va., 14 S. E. Rep. 410.

80. DEPOSITIONS.—The fact that a commission to take depositions was not executed by examining all the witnesses named, does not require the suppression of such depositions as were taken.—*Schunior v. Russell*, Tex., 18 S. W. Rep. 485.

81. DIVORCE—Alimony.—Rev. St. § 2364, provides for a final division of property between the parties to a decree of divorce. Section 2369 provides for revising a decree as to alimony, where there was not a final division of the property: *Held*, that a decree providing for the payment of a certain annual sum to the wife as alimony, "so long as she remained unmarried, in lieu of all other interest in husband's estate," was not such a final division of the property as to preclude the court from afterwards entertaining a petition in relation to the wife's assignment of such alimony.—*Kempster v. Evans*, Wis., 51 N. W. Rep. 327.

82. DOWER—Devise in Lieu.—Testator devised a specific portion of his realty to his wife for life, with remainder to his daughter. On his death the widow claimed a dower interest in fee in the subject of the devise, which claim the daughter contested on the ground that, the devise to the wife being of a life-estate in a portion only, instead of the whole, of testator's estate the allowance of dower in fee in such specific portion would be manifestly inconsistent with the testator's intent: *Held*, that the contention was without merit, and that the widow was entitled to dower.—*Parker v. Hayden*, Iowa, 51 N. W. Rep. 248.

83. DURESS—Fear of Malicious Prosecution.—Under Civil Code, § 1569, a note payable to one who, for the sole purpose of intimidating the maker, illegally and fraudulently procured a warrant for his arrest on a charge of embezzlement, and which was executed in fear of, and to procure immunity from, arrest and imprisonment, is void.—*Morrill v. Nightingale*, Cal., 28 Pac. Rep. 1068.

84. ELECTION CONTEST—Bill of Exceptions.—In proceedings in the district court to contest an election, held for the purpose of locating a county-seat, the evidence should be preserved by bill of exceptions the same as in other cases, and, in the absence of such a bill, it will be presumed that the evidence was sufficient to support the finding and judgment.—*Peters v. Morey*, Neb., 51 N. W. Rep. 312.

85. ELECTIONS—Returns—Mandamus.—When inspectors of election have completed their count, and executed and delivered the returns, their legal powers end, and the board of canvassers had no right to accept or act upon a second or corrected return and may be compelled by *mandamus* to canvass the vote as originally returned.—*Roemer v. Board of City Canvassers*, Mich., 51 N. W. Rep. 267.

86. EMINENT DOMAIN—Compensation.—The provision of the act of March 31, 1874, § 8, requiring railroad companies to maintain and construct crossings and approaches at public highways, is a police regulation, and where railway lands are taken by a municipal corporation for street purposes, interruption to travel, or the cost and expense of constructing and maintaining such crossings, are not proper elements of damage.—*Chicago & N. W. Ry. Co. v. City of Chicago*, Ill., 29 N. E. Rep. 1109.

87. EVIDENCE—Declarations of Agent.—Declarations or admissions of an agent not made in the course or within the scope of his agency while transacting business for his principal, nor in relation to a transaction or matter then depending, are hearsay, and not evidence against his principal.—*Van Doren v. Bailey*, Minn., 51 N. W. Rep. 875.

88. EXECUTION—Relief against Improper Levy.—A petition to enjoin a sale of land under an execution, which avers that the judgment was rendered in violation of an agreement between the attorneys of the parties that the same should be taken for a less amount, is fatally defective if it does not show authority in the attorneys to make the agreement.—*Anderson v. Oldham*, Tex., 18 S. W. Rep. 557.

89. EXPERT TESTIMONY—Opinion Evidence.—In a suit by the owner of land, who has deeded a railway company a right of way over it, "with right to use such additional land as may be necessary for the construction and maintenance, of its road, and to take and use water and stone therefrom," against the company, for unnecessarily damaging his land, a witness, though not an expert in railway construction, but who is familiar with the land and the manner of the construction of the road, can testify that, in his opinion, plaintiff's land would not have been damaged by standing water had the road been constructed in a different manner.—*Gulf, etc. Ry. Co. v. Richards*, Tex., 18 S. W. Rep. 611.

90. FEDERAL COURTS—Appeal.—On appeal to the circuit court of appeals the clerk of the court below, being the custodian of the record, is to determine, in the absence of agreement of counsel, what evidence shall be included in the transcript following the note of evidence made under the rule of court; and if any omissions are found relief can be had by *certiorari* for diminution of the record, as provided by court rule 18.—*Blanks v. Klein*, U. S. C. C. of App., 49 Fed. Rep. 1.

91. FEDERAL COURTS—Following State Law.—The decisions of a State court as to the sufficiency of an appeal in a special proceeding are controlling upon the federal courts.—*New York, etc. R. Co. v. Cockcroft*, U. S. C. C. (Conn.), 49 Fed. Rep. 3.

92. FEDERAL OFFENSE—Public Lands—Perjury in "Final" Proof.—Under Rev. St. § 2262, the proof required of a pre-emptionist is original, and he cannot be convicted of perjury on indictment alleging perjury in making "final" proof.—*United States v. Bedgood*, U. S. D. C. (Ala.), 49 Fed. Rep. 54.

93. FRAUDS, STATUTE OF.—Where defendant obtains title to land with his own means, under a parol agreement to let plaintiff have an interest in the land on condition that plaintiff would pay one-half the expense incurred in acquiring title, the contract is void under the statute of frauds.—*Robbins v. Kimball*, Ark., 18 S. W. Rep. 457.

94. FRAUDS, STATUTE OF—Debt of Another.—A physician, having rendered professional services to defendant's father, was told by defendant to charge the bill to him, and also future services. The charge had been made in the physician's account-book to the father, by his surname, but, after the promise, defendant's first initial was prefixed: *Held*, that defendant was liable for the services rendered after his promise, but not for those rendered prior thereto.—*Chappel v. Barkley*, Mich., 51 N. W. Rep. 351.

95. FRAUDS, STATUTE OF—Pleading.—The answer to a bill in chancery, alleging a parol gift, asserted that, if plaintiffs "should testify to such gift, they will, by their statement, as they have in their bill, show only such parol gift as is governed by the statute of frauds," etc: *Held*, that this sufficiently pleaded the statute.—*Schoonmaker v. Plummer*, Ill., 29 N. E. Rep. 1114.

96. FRAUDULENT CONVEYANCE OF LANDS.—An execution creditor does not, by proceeding to a sale of lands fraudulently conveyed by the debtor and by purchasing the land himself, waive his right thereafter to maintain an action to quiet his title by setting aside the fraudulent conveyance; nor is such right affected by the fact that the lands were purchased by him for a trifle, in consequence of the existence of the conveyance.—*Wagner v. Law*, Wash., 28 Pac. Rep. 1109.

97. GAMING—Recovery of Losses.—Under Gen. St. ch 47, art. 1 § 2, providing that, "if any person shall lose to another" at gaming, he may recover the money paid while a professional pool-seller on horse races cannot by an original action, recover money won from him, such amount can be set off against an action by the winner to recover money lost by him to the pool seller

within the same period.—*Elias v. Gill*, Ky., 18 S. W. Rep. 454.

98. GIFTS—Services of Child.—The mere fact that a parent told his child that she would be well paid for her services rendered the family after she became of age, does not entitle her to recover therefor.—*Reynolds' Admrs. v. Reynolds*, Ky., 18 S. W. Rep. 517.

99. GRAND JURY—Indictment of Corporation.—The law makes it the duty of the grand jury to inquire into "all public offenses," etc., and there is no distinction, as to their duty to investigate, between natural persons and corporations. Whatever evidence will justify either an indictment or a presentment against an individual will justify an indictment or presentment against a corporation for any offense which the corporation can commit.—*State v. Security Bank of Clark*, S. Dak., 51 N. W. Rep. 337.

100. HABEAS CORPUS—Constitutionality of Statute.—Where a person is convicted of crime, and given an indeterminate sentence of from three to eight years, within the discretion of the State board of control, according to the form prescribed by Rev. St. § 4733, as amended by Laws 1889, ch. 390, and the only question is as to whether the statute is unconstitutional in attempting to confer on the board powers which are both executive and judicial, the appropriate remedy for the release of the said person is by a petition in error, and not a writ of *habeas corpus*.—*In re Pikulik*, Wis., 51 N. W. Rep. 261.

101. HABEAS CORPUS — Jurisdiction of Supreme Court.—The original jurisdiction of the supreme court in *habeas corpus* proceedings is conferred on the court, and not on the judges singly. There is no authority, therefore, for a judge of the court alone to grant or hear a writ of *habeas corpus*.—*In re White*, Neb., 51 N. W. Rep. 287.

102. HABEAS CORPUS — Mandamus.—Where a person was convicted of larceny, and the court, under the indeterminate sentence act, which was afterwards declared unconstitutional by the supreme court, attempted to impose on him a sentence of imprisonment not exceeding five years, and the prisoner applied for a writ of *habeas corpus*, which was granted, and a hearing had before a circuit judge, who ordered the prisoner discharged, but entered a stay of proceedings for the purpose of having the question decided by the supreme court, the supreme court has no power to review the order of the circuit judge by *mandamus*.—*Attorney General v. Daboll*, Mich., 51 N. W. Rep. 280.

103. HABEAS CORPUS—Substitute for Writ of Error.—A writ of *habeas corpus* cannot be used as a mere substitute for a writ of error, but will only be issued if applied for to relieve from imprisonment under the order or sentence of some inferior federal court, when such court has acted without jurisdiction, or has exceeded its jurisdiction, and its order is for that reason void.—*In re Boyd*, U. S. C. C. of App., 49 Fed. Rep. 48.

104. HIGHWAY—Adverse Possession.—Where a public alley is closed up and held by open and notorious possession for more than 20 years, the abutting property owners lose such private rights in it as are necessary in order to maintain an action for obstructing it.—*Woodruff v. Paddock*, N. Y., 29 N. E. Rep. 1021.

105. HIGHWAYS—Commissioners.—In a proceeding for the establishment of a public road, the action of the appraisers fixing the damages of a land owner, and the order of the board of commissioners directing payment of such damages, constitute one proceeding, and an appeal from such order will lie on behalf of the land owner as from an "assessment of damages" in such proceeding (Code Civil Proc. § 2978), and need not be taken under section 2695, requiring appeals from orders of commissioners to be taken within 20 days.—*Pearson v. Commissioners of Island County*, Wash., 28 Pac. Rep. 1108.

106. HIGHWAYS—Railroad Crossing.—Where the legislature authorizes and requires a railway company, by its charter, in constructing its railways across streets and highways, to put the same in proper condition and repair, so as not to interfere with public travel, it is not a trespasser in entering thereon for the purpose of restoring and improving the same, as commanded by its charter, and, if the work is done with reasonable prudence and skill, it is not liable for consequential damages to owners of abutting land.—*Robinson v. Great Northern Ry. Co.*, Minn., 51 N. W. Rep. 384.

107. HOMESTEAD—Community Property.—The proportional interests which a widow and minor children take in community property set apart for their use as a homestead are determined by the statute in force at the time the order of probate is made.—*Sheehy v. Miles*, Cal., 28 Pac. Rep. 1046.

108. HUSBAND AND WIFE.—Where a husband, who has managed his wife's business since their marriage, signs her name, without her knowledge, to an application to a loan company for a loan, and the wife signs the notes and mortgage given to secure the loan, the wife must be regarded as having ratified the unauthorized signing of the application, and is bound by the statement therein contained.—*Scottish-American Mortg. Co. v. Deas*, S. Car., 14 S. E. Rep. 486.

109. HUSBAND AND WIFE—Community Property.—Land acquired by a husband during marriage is *prima facie* community property, and the presumption can be rebutted in favor of children of a prior marriage only by showing that the consideration arose from the community property of the prior marriage, or from the wife or the husband, prior to his second marriage.—*Duncan v. Bickford*, Tex., 18 S. W. Rep. 598.

110. HUSBAND AND WIFE—Mortgage.—A wife who joins her husband in a conveyance of their homestead to secure a loan, receiving back a bond for reconveyance, which, for the terms of the loan, refers to a written agreement made by the husband, is bound, in the absence of misrepresentation or fraud, by a stipulation in such agreement that the interest shall be paid annually although she had no actual knowledge thereof.—*Jarvis v. Fox*, Mich., 51 N. W. Rep. 272.

111. HUSBAND AND WIFE—Wife's Separate Estate.—The fact that a husband causes land which he purchases to be conveyed to his wife with intent to shield it from his creditors, will not give the wife a separate estate in the land, in the absence of any recitals in the deed sufficient to create in her a separate estate.—*Gaston v. Wright*, Tex., 18 S. W. Rep. 576.

112. INJUNCTION—Enforcement of Judgment.—Where it is shown that a judgment has been recovered against both the administrator of an estate and a surety on the bond of such administrator; that the surety has received nothing either from the assets of the estate or from the administrator as such, and is insolvent; and that the administrator has converted the interest of the judgment creditor in the estate, and is solvent—the judgment creditor will be restrained from selling land purchased by plaintiffs of the insolvent surety until the property of the administrator has been subjected to the payment of the judgment.—*Hill v. Mellon*, Ark., 18 S. W. Rep. 540.

113. INJUNCTION — Motion to Dissolve.—A court of chancery will not grant an injunction to restrain a trespass merely because it is a trespass; yet it will interfere by injunction where the injury is irreparable, or where full and adequate relief cannot be granted at law, or where it is neceessary to prevent a multiplicity of suits, and especially where the trespasser is alleged to be insolvent, and nothing can be realized on judgments that may be obtained against him at law. In such cases it will not do to simply allege that the complainant has no adequate remedy at law, etc.—*Indian River Steamboat Co. v. East Coast Transp. Co.*, Fla., 10 South. Rep. 480.

114. INJUNCTION—Refunding Bond.—An interlocutory decree, dissolving an injunction to stay proceedings on a judgment at law, should order defendant to give a refunding bond, as required by Code 1886, § 3531, as a condition precedent to the enforcement of the judgment in case it should afterwards be perpetually enjoined.—*Dexter v. Ohlander*, Ala., 10 South. Rep. 527.

115. INSOLVENCY — Corporation—Distribution of As-

sets.—In a proceeding against an insolvent corporation under chapter 76, Gen. St., to wind up its affairs and distribute its assets among the creditors, a creditor may be allowed by the court, upon a proper showing, to come in and become a party to such proceeding after the expiration of the time previously limited for such purpose.—*Spooner v. Bay St. Louis Syndicate*, Minn., 51 N. W. Rep. 377.

116. INSURANCE — Conditions — Waiver.—The insurer may either expressly or by implication waive the preliminary proof and the certificate of loss.—*Purces v. Germania Ins. Co.*, La., 10 South. Rep. 495.

117. INSURANCE—Loss Payable to Mortgagee.—A policy insuring the owner of property against fire contained a clause, "loss, if any, payable to C, mortgagee, as his mortgage interest may appear." In a subsequent agreement, extending the time of payment of the mortgage, the owner agreed to keep the mortgagee's interest insured so long as the mortgage remained unpaid, etc: *Held* that, as the policy, did not run to the mortgagee, nor insure his interest only, the owner, having procured the insurance and paid the premium, was entitled to recover thereon.—*Minnock v. Eureka Fire & Marine Ins. Co.*, Mich., 51 N. W. Rep. 366.

118. INTOXICATING LIQUORS — Constitutionality.—Act Ind. March 17, 1875, imposing a tax on the sale of liquors, is constitutional, though the effect thereof be to promote the interests of liquor dealers by deterring others from entering the business.—*Haggart v. Stehlin*, Ind., 29 N. E. Rep. 1073.

119. INTOXICATING LIQUORS—Interstate Commerce—Original Packages.—A person who keeps a saloon with bar and fixtures, receives as original packages bottles of beer and whisky, and sells the same over his bar to customers who destroy the seals or wires on the bottles, pull the corks, pour the contents into glasses on the bar, drink the same, and leave the bottles on the bar, is a seller of the contents of original packages, and not the original packages themselves.—*Hopkins v. Lewis*, Iowa, 51 N. W. Rep. 255.

120. INTOXICATING LIQUORS — Sunday.—To justify a conviction of keeping open a tippling house on the Sabbath, it is not necessary to show that the liquor sold was drank on the premises; it is enough that it was drawn out and delivered in open vessels.—*Harris v. People*, Colo., 28 Pac. Rep. 1133

121. JUDGMENT.—A petition by a judgment debtor to enjoin the enforcement of the judgment, which foreclosed a lien on his personal property, states a cause of action where it alleges that the property was delivered to an agent of the judgment creditor to be sold so that the proceeds might be applied to the payment of the judgment; that the property was of sufficient value to more than satisfy the judgment; and that the judgment creditor converted the property, and failed to apply the proceeds to the payment of the judgment.—*Harrison Mach. Works v. Templeton*, Tex., 18 S. W. Rep. 601.

122. JUDGMENT—Accident or Surprise.—A party who, by reason of misunderstanding his attorney's statement as to when court met, fails to appear at the time his case is called for trial, is not within Civil Code, § 340, subd. 3, allowing a new trial for "accident or surprise which ordinary prudence could not have guarded against," or section 518, permitting a judgment to be vacated for "unavoidable casualty or misfortune, preventing the party from appearing or defending."—*Ross v. Louisville & N. R. Co.*, Ky., 18 S. W. Rep. 456.

123. JUDGMENT — Equity Jurisdiction.—The jurisdiction of courts of equity to set aside judgments at law will be exercised only when it appears that the judgment complained of is unconscionable, and when the party applying had no opportunity to make defense, or was prevented from so doing by accident or fraud of the opposing party.—*Sufeldt v. Gandy*, Neb., 51 N. W. Rep. 302.

124. JUDGMENT—Jurisdiction.—Plaintiffs, in an action against a corporation, obtained an attachment, which was levied on its personal property, but, a receiver of the corporation having been appointed, all its property was sold, and the proceeds were paid, by the receiver, under an order of the court, to other creditors of the corporation, upon their giving a bond to pay such judgment as plaintiffs and another creditor might recover: *Held*, that a judgment rendered in the action against the obligors and their sureties, without making them parties, was void as against them.—*Williams v. Warren*, Tex., 18 S. W. Rep. 560.

125. JUDGMENT—Opening by Subsequent Creditor.—A judgment creditor cannot intervene in a suit between his judgment debtor and another plaintiff for the purpose of opening, on the ground of fraud, a judgment obtained by the latter prior to his own; but the proper practice is to apply for a rule on the plaintiff and sheriff to show cause why the money produced by the sheriff's sale should not be paid into court, and the validity of the judgment determined before an auditor or by the court.—*Moore v. Dunn*, Penn., 23 Atl. Rep. 596.

126. JUDGMENT IN REPLEVIN.—A judgment in replevin against plaintiff is not void, or subject to collateral attack by him, because it ou.its to order a return of the property.—*Fromlet v. Poor*, Ind., 29 N. E. Rep. 1081.

127. JUDGMENT—When Final and Conclusive.—A judgment for the recovery of land, directing a writ of possession to issue upon payment of purchase money, and for costs, is final and conclusive against a subsequent grantee of the defendant therein, the purchase money having been paid into court under agreement of the parties, although a stipulation for an arbitration, contained in the agreement upon which the judgment was founded, has not been complied with.—*Henderson v. Moss*, Tex., 18 S. W. Rep. 558.

128. JUDGMENT AGAINST INFANT.—A judgment in partition, rendered without actual service of process upon minors, who were represented by a guardian *ad litem*, is only voidable, and not void.—*Alston v. Emmerson*, Tex., 18 S. W. Rep. 566.

129. JUDGMENT BY DEFAULT—Setting Aside.—A grantee is the "legal representative" of the grantor, within Code Civil Proc. § 473, providing that the court may relieve a party or his "legal representative" from a judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect.—*Malone v. Big Flat Gravel Min. Co.*, Cal., 28 Pac. Rep. 1063.

130. LANDLORD AND TENANT.—A landlord who rents to an individual, and stipulates to furnish him board, but afterwards accepts a partnership, of which the first tenant is a member, as tenant in lieu of the original tenancy, has no lien upon the crop made by the partnership for the board of the original tenant, the partnership, having made no stipulation as to such board, and the new partner not knowing of any contract relating thereto.—*Reynolds v. Hindman*, Ga., 14 S. E. Rep. 471.

131. LANDLORD AND TENANT—License.—The tenant of an apartment, by consent of the owner of the house, put in water-pipes, to connect with the main pipes, to furnish water to his apartment: *Held*, that the right to receive water through the main pipes was not a mere license, revocable at will of the owner of the premises; and a mandatory injunction would issue to compel the owner to permit the water to flow through the main pipes, which he had stopped up.—*Brauns v. Glesige*, Ind., 29 N. E. Rep. 1061.

132. LANDLORD AND TENANT—Rent.—A lease gave the lessee a privilege to purchase at any time during its continuance, and also contained a provision that, if rent should become in arrear, the lessor might declare the term ended: *Held*, that the privilege to purchase was not lost because of failure of the lessee to pay his rent, in the absence of any unequivocal act indicating an intention to forfeit the lease.—*Gradle v. Warner*, Ill., 29 N. E. Rep. 1118.

133. LANDLORD AND TENANT—Rent.—An oral stipulation by the landlord at the time of taking an absolute promissory note for rent of mills, to the effect that if the mills should be destroyed by fire the rent should

cease, and that he would not require the tenant to pay rent for the balance of the term, is no defense to an action upon the rent note, it appearing that there was no intention by either of the parties to insert the stipulation in the note, but that it was left out by mutual consent, and not by fraud, accident, or mistake.—*Stafford v. Staunton*, Ga., 14 S. E. Rep. 479.

134. LIFE INSURANCE — Conditions of Policy.—Under the terms of a policy of life insurance, that it could be exchanged for a paid-up term policy, subject to the condition that the policy, duly receipted, should be transmitted to and received by the company before default in the payment of a premium, or within 30 days thereafter, it is not sufficient that within 30 days after default a letter was sent to the company by attorneys, stating that the policy had been left with them for the purpose of procuring a term policy, and that they demanded such term policy, and on receipt of it would send the original policy, duly receipted.—*Universal Life Ins. Co. v. Devore*, Va., 14 S. E. Rep. 532.

135. LIMITATIONS — Estoppel to Plead. — Where the payee of a note asks the maker to renew the contract, and he replies that it would never run out of date, his personal representatives, in an action on the note after his death, are not estopped from pleading the statute of limitations.—*Adams v. Cameron*, Ala., 10 South. Rep. 506.

136. LIMITATION OF ACTIONS.—An action to recover money paid for stock which plaintiff was induced to purchase by the fraudulent representations of defendant is an action at law against which the statute of limitations begins to run from the time the money was paid; and Rev. St. § 4222, subd. 7, which provides that causes of action for relief on the ground of fraud, in cases in which before February 28, 1857, were "solely cognizable by a court of chancery," shall be deemed not to have occurred until the discovery by the person aggrieved of the facts constituting the fraud, does not apply.—*Jacobs v. Frederick*, Wis., 51 N. W. Rep. 320.

137. LIMITATION OF ACTIONS—Trustee.—Where a debt secured by a deed of trust is barred by limitation, and the trustee refused to exercise his power of sale, a plea of limitation is a good defense to a suit to appoint a substitute trustee.—*Fuller v. Oneal*, Tex., 18 S. W. Rep. 479.

138. MANDAMUS.—A peremptory writ of *mandamus* will only be allowed when the right of the plaintiff thereto is clear.—*Kansas Nat. Bank of Wichita v. Horey*, Kan., 28 Pac. Rep. 1090.

139. MANDAMUS.—To entitle a party to a writ of *mandamus*, he must have a clear legal right to have a service performed by the party to whom he seeks to have the writ directed. *Mandamus* will only issue to compel action when the right of the relator is clear.—*Bailey v. Lawrence County*, S. Dak., 51 N. W. Rep. 331.

140. MANDAMUS—State Officers.—If, in the exercise of some power neither political or essentially governmental, the law specially enjoins upon the governor the performance of some particular act, under circumstances in which he has no discretion, and he refuses to perform the act, and by his refusal a party is deprived of his property or other legal right, the injured party may have relief by *mandamus* against the governor, if there be no plan, speedy, and adequate remedy in the ordinary course of law.—*Greenwood Cemetery Land Co. v. Routt*, Colo., 28 Pac. Rep. 1125.

141. MANDAMUS TO MUNICIPAL BOARD.—On an application for a writ of *mandamus* to compel the city of New Orleans to pay a judgment regularly obtained against it, such judgment is conclusive as to the city's liability, and no defense can be made on the ground that the debt was not paid out of the revenues of the year for which it was contracted, in accordance with Acts La. 1877 (Ex. Sess.), No. 30, p. 47, providing that no municipal corporation shall expend any money in any year in excess of the actual revenue for that year, and that the revenue for each year shall be devoted to the expenditures thereof.—*Mayor, Etc., of City of New Orleans v. United States*, U. S. C. C. of App., 49 Fed. Rep. 41.

142. MARRIED WOMAN — Conveyance — Estoppel.—Where a married woman, by the direction and sanction of her husband, and acting under a power of attorney, attempted to make a sale and conveyance of his land—an improved farm—for a consideration paid, and executed a deed therefor under such power, the deed is invalid on account of the wife's disability; but if the consideration is accepted and retained by him, and the possession delivered and accepted by the purchaser with his consent, and he, with knowledge of the facts, acquiesces in the transaction and the possession of the purchaser and his assignee for many years, he will be estopped to deny that the latter is the equitable owner.—*Jones v. Bliss*, Minn., 51 N. W. Rep. 375.

143. MASTER AND SERVANT—Negligence.—In an action against owners of a private logging railway for personal injuries to their employee, it appeared that his injuries might have been caused by negligent loading of cars by an independent contractor: *Held*, that a refusal to submit to the jury the question whether the accident was caused wholly or in part by such negligent loading was error, even though the question whether it might have been caused in part by such negligence was not material.—*Haley v. Jump River Lumber Co.*, Wis., 51 N. W. Rep. 321.

144. MASTER AND SERVANT— Defective Appliances.—A servant who seeks to recover for an injury which, he claims, resulted from defective machinery or appliances furnished by the master to be used about the business in which such servant was employed, takes upon himself the burden of establishing negligence on the part of the master, and due care on his own part; and, in order to entitle him to recover, he must overcome two presumptions: *First*, that the master has discharged his duty to him, by providing suitable machinery and appliances for the business, and in keeping them in condition; *second*, that he assumed all of the usual and ordinary hazards of the business. — *Johnson v. Chesapeake & O. Ry. Co.*, W. Va., 14. S. E. Rep. 432.

145. MASTER AND SERVANT — Defective Appliances.—The plaintiff, an inexperienced employee, being put to work with machinery that was deficient, and therefore unsafe, and by reason of his inexperience not knowing of the danger which he incurred on account of the deficiency, he was entitled to recover for a personal injury which resulted in a large part, if not wholly, from the use of such unsafe machinery.—*Carter v. Cotter*, Ga., 14 S. E. Rep. 476.

146. MASTER AND SERVANT — Injuries to Minor Employee.— When it is the duty of the master to give an infant employee such instructions as are necessary to make him aware of his danger, and to place him in the same situation with reference to it as if he were an adult, it must be made to appear that the infant understood the danger, as well as that he had the capacity to understand it, before he can be denied the right of recovery.—*Chicago Anderson Pressed-Brick Co. v. Reinneiger*, Ill., 29 N. E. Rep. 1106.

147. MASTER AND SERVANT — Measure of Damages.—Under Code, § 2591, that the measure of damages, where the heirs are in no relation of dependence on deceased for support, is such sum as, with legal interest during the period of his expectancy of life, would produce at the expiration of such period a sum equal to the accumulations of his earnings for the same period, estimated on the basis of his health, ability, habits of sobriety, industry, economy, gross earnings, and expenditures. — *McAdory v. Louisville & N. R. Co.*, Ala., 10 South. Rep. 507.

148. MEASURE OF DAMAGES — Breach of Contract.—In an action to recover the price of boilers for a pleasure boat at a summer resort, supplied to the proprietor of the resort, defendant counter-claimed for damages caused by failure to deliver the boilers at the time agreed: *Held*, that the measure of damages for the breach was the rental value of the boat, and not the interest on the capital invested therein for the time defendant was deprived of its use.—*Brownell v. Chapman*, Iowa, 51 N. W. Rep. 249.

149. MECHANICS' LIENS — Performance of Contract.— Where under a contract for the erection of several houses, which makes no provision for the completion of the work by the owner on the contractor's default, the owner has paid all installments due, but the contractor refuses to put in the sewer and water connections, as agreed, and the owner, after notice, completes the work, the premises are not subject to the liens of material-men.—*Hollister v. Mott*, N. Y., 29 N. E. Rep. 1103.

150. MECHANICS' LIENS — Public Buildings.—Since the Texas statute in respect to mechanics' liens does not expressly include public buildings, a mechanic's lien cannot be enforced against a county court house, and the public square on which it is situated.— *Atascosa County v. Angus*, Tex., 18 S. W. Rep. 563.

151. MECHANICS' LIENS — Subcontractors. — Stipulations in a building contract, between the builder and the owner of the premises, that the last payment of the contract price need not be paid until "a complete release of liens shall have been furnished" the owner, and that there shall not "be any legal or lawful claims against the party of the first part [builder] for work or materials furnished," do not preclude a subcontractor from enforcing a mechanic's lien against the building. —*William M. Lloyd & Co. v. Krause*, Pa., 23 Atl. Rep. 602.

152. MINING RECORDERS— Illegal Fees.— A mining recorder, who violated Comp. Laws 1888, § 2796, making it misdemeanor to receive larger fees than therein provided for recording mining locations, is not excused because he honestly believed he had a right to receive larger fees under a local mining custom.—*People v. Monk*, Utah, 28 Pac. Rep. 1115.

153. MORTGAGES — Record. — A recorded real-estate mortgage is constructive notice to subsequent mortgagees, if the note thereby secured is decribed, even though the amount of the note is omitted from such description.—*Clementz v. M. T. Jones Lumber Co.*, Tex., 18 S. W. Rep. 599.

154. MORTGAGE.—In an action for debt and to foreclose a mortgage, persons who had caused an execution to be levied on the mortgaged property, and claim an interest in it, are properly made defendants, and charged with a conversion thereof, though the property is in the hands of the sheriff, it being held subject to the lien of their execution. — *Silberberg v. Trilling*, Tex., 18 S. W. Rep. 591.

155. MORTGAGES —Absolute Deed.— A conveyance of land in consideration of the grantee assuming certain indebtedness of the grantor, and a contemporaneous agreement that the latter may purchase the property for the amount of such indebtedness, as computed, within a specified time, constitute a mortgage. The fact that by the contract possession was given to the grantee until payment of such amount does not affect the character of the transaction. — *Clark v. Woodruf*, Mich., 51 N. W. Rep. 357.

156. MORTGAGE — Assignment. — In a foreclosure of a mortgage, assigned to plaintiff by the personal representatives of the mortgagee, after the mortgage became due, any defense may be made that would have been admissible against the mortgagee. — *Robeson v Robeson*, N. J., 23 Atl. Rep. 612.

157. MORTGAGES — Foreclosure. — A person cannot legally foreclose a mortgage upon real property by advertisement when the record title to the instrument is in another. — *Backus v. Burke*, Minn., 51 N. W. Rep. 284.

158. MORTGAGES — Priority—Record.—A mortgage of a parcel of land, made and recorded before the mortgagor acquires title, in order to raise part of the purchase money therefor, *held* not to take precedence of a mortgage by him to the vendor for the remainder of the purchase price, made at the time of the execution of the deed, and taken by the latter in good faith, and without notice of the existence of such prior mortgage.—*Schoch v. Birdsall*, Minn., 51 N. W. Rep. 382.

159. MORTGAGE ON CROPS TO BE GROWN.—A mortgage n advance of a crop to be sown and raised on the land of the mortgagor will be treated as an executory agreement to mortgage, and will take effect when the crop is sown; but the property mortgaged must be capable of indentification, as in other cases.—*Walter A. Wood Mowing & Reaping Mach. Co. v. Minneapolis & N. Elevator Co.*, Minn., 51 N. W. Rep. 378.

160. MUNICIPAL AID TO IMPROVEMENT COMPANY. — Under chapter 114 of the laws of 1887, authorizing counties and cities of the second and third class to issue bonds and subscribe to the capital stock of companies organized for the purpose of mining coal and otherwise developing the resources of the country, a company must be named, as the recipient of the proposed subscription and bonds, in the petition and notice for the election; and where no existing company is named, and no amount of bonds stated, in such petition and notice, the subscription and issue of bonds are unauthorized and void. — *People's Nat. Bank of Ottawa v. City of Pomona*, Kan., 28 Pac. Rep. 1089.

161. MUNICIPAL CORPORATIONS — Annexation.—Local Acts 1891, No. 214, annexed the larger portion of a certain village to a city, and provided that taxes in the annexed territory should be collected as if the act had not been passed: *Held*, where it was necessary to elect a new treasurer of the village because the old treasurer lived in the annexed portion, that the old treasurer was not retained in office for the purpose of collecting the taxes. — *Ketcham v. Wagner*, Mich., 51 N. W. Rep. 281.

162. MUNICIPAL CORPORATIONS — Contract for Public Works.—The mere fact that a party who has made proposals for public work in New York city is the lowest bidder, and knows that fact, does not constitute an award to him of such contract, within the consolidation act, §§ 64, 65, regulating the letting of work upon competitive bids, which provide that "if the lowest bidder shall refuse or neglect within 5 days after due notice that the contract has been awarded, to execute the same, the deposit made by him shall be forfeited to the city."— *Erving v. Mayor, Etc.*, N. Y., 29 N. E. Rep. 1101.

163. MUNICIPAL CORPORATIONS—Defective Streets.—As Pub. Acts 1887, No. 264, relating to the recovery of damages sustained from defective highways, and providing that no municipality shall be liable to any person for "bodily injury" sustained upon public highways except under the provisions of the act, and abrogating the common-law liability for such "bodily injuries," makes no provisions for recovery of damages in case of death from such injuries, it does not prevent a recovery by the administratrix of an intestate, whose death resulted from injuries so received, under Laws 1848, as amended by Laws 1873, §§ 1, 2, (How. St. §§ 8313, 8314), *Racho v. City of Detroit*, Mich., 51 N. W. Rep. 360.

164. MUNICIPAL CORPORATION—Incorporation.—Where an act incorporating a city appears to have been passed by the legislature, and approved, it must be treated as valid and effectual for the purposes of its enactment; and it makes no difference how the passage of the act was induced, or that it contained no provision requiring a ratification by the people or trustees of the town. —*Smith v. Crutcher*, Ky., 18 S. W. Rep. 521.

165. MUNICIPAL CORPORATIONS — Taxation.—Under St. 1887, No. 312, providing that city supervisors, upon receiving a properly certified transcript of a judgment against the city, shall assess the same, as a part of the city tax, upon the then next city tax-roll, it is not necessary that the city council or the county supervisors should authorize the same to be assessed, but it is the duty of the supervisors of the city to apportion the same among the wards of the city within a reasonable time after receiving such transcript.—*Shippy v. Wilson*, Mich., 51 N. W. Rep. 353.

166. MUTUAL BENEFIT ASSOCIATIONS—Assessments.— A mutual benefit association had two sets of rules or by-laws, one governing a widows' and orphans' fund, the other, a sick benefit fund. The former provided for suspension of a member in case of the non-payment

of an assessment, and the latter provided for the payment of dues and fines, and declared that a member entitled to sick benefits should not become in arrears so as to debar him from receiving them: *Held*, that a member entitled to sick benefits might be suspended for non-payment of an assessment.—*Hansen v. Supreme Lodge Knights of Honor*, Ill., 29 N. E. Rep. 1121.

167. MUTUAL BENEFIT INSURANCE—Change of Beneficiary.—*Held*, on bill of interpleader by the society, that a court of equity should recognize the disposition by will as a valid designation of a new beneficiary—*Grand Lodge A. O. U. W. v. Noll*, Mich., 51 N. W. Rep. 268.

168. MUTUAL BENEFIT SOCIETY—Notice of Assessments.—Provisions of the constitution of the defendant, relating to its system of mutual life insurance, and prescribing that notices of assessments for the death of members shall be "sent" by the 8th day of the month, *held*, to be only directory as to the time specified.—*Benedict v. Grand Lodge A. O. U. W.*, Minn., 51 N. W. Rep. 371.

169. NEGLIGENCE.—Where plaintiff, while walking along a public street is put in sudden peril by the negligent act of defendant in throwing a trunk from a wagon, and in an instinctive effort to escape plaintiff falls over a trunk standing on the sidewalk, and is injured, defendant is liable.—*Vallo v. United States Exp. Co.*, Penn., 23 Atl. Rep. 594.

170. NEGLIGENCE—Dangerous Premises.—At common law, the owner of a building not peculiarly exposed to the danger of fire is not bound to adopt extra or unusual precautions for the escape of the occupants in case of fire.—*Pauley v. Steam-gauge & Lantern Co.*, N. Y., 29 N. E. Rep. 999.

171. NEGLIGENCE—Dangerous Premises — License.—The owner of a private way opening on a public street, who fails to erect a sign that the way is not public, is not liable for injuries resulting from defects therein to strangers venturing thereon without permission.—*Stevens v. Nichols*, Mass., 29 N. E. Rep. 1150.

172. NEGLIGENCE—Excavations in Streets.—Where the owners of a city lot, in the course of constructing thereon a building abutting on a street, make, by their own employees, an excavation in the adjacent sidewalk for coal vaults, and an area to be used in connection with the building, a duty devolves upon them to guard it with ordinary care; and this duty is not shifted from them by letting the work of building the area walls and constructing the coal vaults to an independent contractor who is to furnish all the material as well as to perform the labor necessary therefor.—*Hawver v. Whalen*, Ohio, 29 N. E. Rep. 1049.

173. NEGOTIABLE INSTRUMENT—Certificate of Deposit—Bona Fide Purchasers.—A *bona fide* purchaser of a negotiable certificate of deposit for value, before maturity, without notice of equities, is protected to the same extent as an innocent holder of other negotiable paper. But if such certificate is transferred when overdue the purchaser takes it subject to all defenses which could have been made, had it remained in the hands of the payee.—*First Nat. Bank of Rapid City v. Security Nat. Bank of Sioux City*, Neb., 51 N. W. Rep. 805.

174. NEW TRIAL—Newspaper Comments during Trial.—Where evidently inspired newspaper comments and reports of interviews, of so gross a nature as to be well calculated to prejudice a jury against one of the parties to a cause, have been published during a trial, and presumably seen by the jury, a new trial will be granted where the verdict is against the parties attacked.—*Meyer v. Cadwalader*, U. S. C. C. (Penn.), 49 Fed. Rep. 82.

175. PARTNERSHIP—Evidence.—Entries made in partnership books before the formation of a limited partnership, by the former partners and another entering as a special partner, of which the latter is not shown to have knowledge, are inadmissible in evidence against him to show that the special partner had not paid his contribution in cash.—*Kohler v. Lindenmeyr*, N. Y., 29 N. E. Rep. 957.

176. PARTNERSHIP—Gift.—Where a member of a firm transfers to his wife without consideration property which she knows to belong to the firm, the other partner may compel her to account the firm therefor.—*Lobdell v. Slawson*, Mich., 51 N. W. Rep. 349.

177. PLEADING—Variance.—Where a petition in an action on a note alleges "that on or about the 11th day of October 1888, defendant made, executed, and delivered his certain promissory note in writing," etc., and the note offered in evidence is dated October 12, 1888, there is no material variance.—*First Nat. Bank of Rockwall v. Stephenson*, Tex., 18 S. W. Rep. 583.

178. PLEDGE—Collateral Security—Sale.—Where a debt for which collateral security was given has been paid, plaintiff cannot enforce the collateral to satisfy some other debt due from the same indorser.—*Hardie v. Wright*, Tex., 18 S. W. Rep. 615.

179. PRACTICE—Interlocutory Orders—Enforcement.—Double term fees, imposed on a defendant as a condition of filing answers and demurrers under Pub. St. ch. 153, providing that the court may make judgments and orders and issue all writs and processes necessary or proper to carry into effect the powers granted to them, can be recovered by plaintiff only by proceedings in the cause, and not in an independent action.—*Knight v. Hurley*, Mass., 29 N. E. Rep. 1149.

180. PRINCIPAL AND AGENT—Authority to Use Name.—A telegram authorizing the use of a person's name for a certain sum of money is not in the nature of a general or continuing letter of credit, and does not extend the right to use the name beyond the amount specified.—*Bullen v. Dawson*, Ill., 29 N. E. Rep. 1038.

181. PRINCIPAL AND AGENT—Personal Liability.—When one who assumes to act as another's agent, without authority so to do, signs the name of the other as maker of a due-bill, he is not personally liable, in an action of contract thereon, unless it contains apt words to charge him as such.—*Cole v. O'Brien*, Neb., 51 N. W. Rep. 316.

182. PRINCIPAL AND AGENT—Powers of Agent.—Where the president and financial agent of a duly-incorporated university, while acting within the scope of his authority, and without assuming to become individually responsible, requests an architect to prepare the plans for a certain building, and the architect knows that the said person is connected with the university, and that the building is intended for a public purpose, this is sufficient to put him on inquiry, and the liability is that of the principal, and not the agent.—*Johnson v. Armstrong*, Tex., 18 S. W. Rep. 594.

183. PRINCIPAL AND SURETY—Release of Surety.—Sundry co-sureties signed a penal bond while in the hands of the principal obligor, on condition that such bond should not be a completed instrument until enough co-sureties had signed and justified, in the respective amounts signed by each, to make up the full penal sum, and the bond duly delivered to the proper officer for approval as required by law. After the requisite solvent co-sureties had signed, the name of one was erased by drawing a line through his signature, with the consent of the principal obligor, but without notice to the other sureties: *Held*, that the erasure, and discharge of the one co-surety, having released all those who signed after him, all the other co-sureties were discharged.—*State v. Allen*, Miss., 10 South. Rep. 473.

184. PRINCIPAL AND SURETY—Withdrawal of Surety.—Notice of withdrawal by a surety upon a deputy sheriff's bond does not discharge such surety until a reasonable time has elapsed to enable the sheriff to secure a new bond for such deputy.—*Reilly v. Dodge*, N. Y., 29 N. E. Rep. 1011.

185. PUBLIC LAND GRANT—Location.—In the case of public grants of land without definite and ascertained limits, the courts cannot protect the alleged rights of the grant-owners until they are located by public survey, adopted and approved; and the mere decision of the secretary of the interior as to the proper boundaries will not give the courts jurisdiction to control the subsequent official survey directed by such decision.—

City of New Orleans v. Paine, U. S. C. C. (La.), 49 Fed. Rep. 12.

186. QUIETING TITLE—Contest of Wills.—Rev. St. 1881, regulating the contest of wills which requires the complaint, setting forth the ground of contest, to be verified, and a bond to be filed by the contestor, does not apply where an executor brings suit against the heirs to quiet his title to his testator's estate; and in such case defendant may contest the will, and avail himself of all defenses open to him in a suit in equity, as though the statute had not been enacted.—*Mason v. Roll*, Ind., 29 N. E. Rep. 1135.

187. QUIETING TITLE—Pleading. — Where, in a suit to remove cloud, it is alleged that the land in question was bought with plaintiff's money for his use and benefit, though the title was taken in another's name, and that defendant's title was acquired under execution sale on a judgment against the holder of the legal title, but that at the date of the levy and sale defendant knew that the land was plaintiff's property, there is a sufficient averment of notice to defendant that the land was plaintiff's when defendant acquired title.—*Osborne v. Prather*, Tex., 18 S. W. Rep. 613.

188. RAILROAD COMPANIES—Crossing—Negligence.—A person who voluntarily and unnecessarily attempts to cross a railroad track in front of an approaching train is guilty of contributory negligence, and, having been struck and killed by the train, there can be no recovery against the railroad company for his death, though its agents were culpably negligent in the management of the train. — *Korrady v. Lake Shore & M. S. Ry. Co.*, Ind., 29 N. E. Rep. 1069.

189. RAILROAD COMPANIES — Negligence — Evidence. —Where an action against a railway company to recover damages for injuries received at one of its stations, by being struck by an incoming train, the plaintiff claimed to have been misled by information that the train which struck him was late, whereas in fact it was on time, or nearly so, and that, acting upon such information, he was crossing its track when it suddenly ran upon and struck him, it is competent, to rebut any inference of contributory negligence that might arise from the circumstances of the accident, to introduce to the jury declarations of strangers to the record, made in his presence, that the train was late.—*Lake Shore & M. S. Ry. Co. v. Herrick*, Ohio, 29 N. E. Rep. 1052.

190. RAILROAD COMPANIES — State Regulation.— State legislatures have power to fix maximum rates of railroad passenger fare, and the courts can only interfere therewith to protect the roads from unreasonable rates.—*Chicago & G. T. Ry. Co. v. Wellman*, U. S. S. C., 12 S. C. Rep. 400.

191. RAILROAD IN STREET — Damages.— In an action against a railroad company for injury to property by reason of the widening of an embankment in the street in front of the property, and the construction and operation of an aditional track thereon, where no evidence was introduced by plaintiff as to how much the market value of the property was diminished by the increased servitude, the court should have granted a nonsuit.— *Denver & R. G. R. Co. v. Costes*, Colo., 28 Pac. Rep. 1129.

192. RECEIVERS.— The jurisdiction of the court over a receiver of a railway company is ended when he is discharged and the property returned; and an order, in a decree discharging him, that such property shall be relieved from liability on claims not established by intervention in the suit in which the receiver was appointed, does not affect the liability of the corporation for personal injuries received while the receiver operated the road, when it has received in the form of improvements earnings out of which damages for such injuries should be paid, although the claim is not established by such intervention.— *Texas & P. Ry. Co. v. Bailey*, Tex., 18 S. W. Rep. 481.

193. RECEIVERS — Appointment. — An attachment creditor cannot have a receiver appointed for property alleged to have been fraudulently conveyed by his debtor to a third person, where the attachment could have been levied on the property, and possession thereof taken by the sheriff.—*Pearce v. Jennings*, Ala., 10 South. Rep. 511.

194. RECEIVER—Negligent Killing.—A receiver is not "proprietor, owner, charterer, or hirer," within Rev. St. art. 2899, giving a right of action for injuries resulting in death caused by the negligence of the proprietor, owner, charterer, or hirer of a railroad, etc., or by the negligence of their servants or agents.—*Turner v. Cross*, Tex , 18 S. W. Rep. 578.

195. REMOVAL OF CAUSES—Alien Corporation.—Under no statute of the United States can an alien defendant remove a cause from the State court to the circuit court of the United States upon the ground of prejudice or local influence. — *Dahlonega Co. v. Frank W. Hall Merchandise Co.*, Ga., 14 S. E. Rep. 473.

196. REMOVAL OF CAUSES—Commencement of Trial.—Where a jury is called into the box, and examined on their *voir dire*, and accepted, but not sworn, it is the commencement of a trial, under the Code; and it is too late thereafter to seek to remove a cause into the United States court. — *Anglo American Provision Co. v. Evans*, Neb., 51 N. W. Rep. 310.

197. REPLEVIN AGAINST OFFICER — Attachment. — Plaintiff, in replevin against an officer levying an attachment, by preventing full service of the attachment by his writ of replevin, and by procuring a traverse of the affidavit in attachment to be made, is estopped to deny complete service of the attachment.—*S. C. Herbst Importing Co. v. Burnham*, Wis., 51 N. W. Rep. 262.

198. REWARD—Lien on Property Found.—The fact that a person who finds a horse recovers judgment against the owner for the amount of an offered reward does not destroy his lien on the horse.—*Everman v. Hyman*, Ind., 29 N. E. Rep. 1140.

199. SALE—Conditional—Validity.— A contract for the sale and delivery of personal property upon condition that the title is to remain in the vendor until the purchase price is paid is invalid as against purchasers in good faith, or judgment and attaching creditors of the vendee without notice, unless a copy of the contract is verified and filed in the manner pointed out in section 26, ch. 32, Comp. St. — *Peterson v. Tufts*, Neb., 51 N. W. Rep. 297.

200. SALE — Contract — Parol Evidence. — Where an agreement for the sale of horses recited that the vendee was "to be allowed to cut back all horses not desired," and to take the remainder, and pay a certain price per head therefor, the vendee had the right to reject all the horses; and, in an action on the contract, parol evidence was inadmissable to show that the parties intended otherwise. — *Matador Land & Cattle Co. v. White*, Tex., 18 S. W. Rep. 603.

201. SALE—Delivery — Acceptance. — In an action for the price of lumber sold and delivered under a verbal contract in contravention of the statute of frauds, where defendant did not rely on the statute, but alleged that they never accepted the lumber, they were entitled, as showing a reason for non-acceptance, to prove that it was not of the contract grade.—*Black v. Delbridge, Brooks & Fisher Co.*, Mich., 51 N. W. Rep. 269.

202. SALE—Warranty.— By agreeing to sell and deliver 30,000 tons of "Powelton coal, of same quality and kind as furnished you during the past year," the seller warrants that the coal to be furnished shall be equal to that furnished during the preceding year.—*Zabriskie v. Central Vt. R. Co.*, N. Y., 29 N. E. Rep. 1006.

203. SALE OF LAND—Statute of Frauds.—After acceptance of a conveyance of lands the vendee cannot avail himself of the want of a written contract for the sale thereof, in an action for the recovery of the purchase money.— *Showalter v. Macdonell*, Tex., 18 S. W. Rep. 491.

204. SALE ON EXECUTION. — No duty devolves on a judgment creditor, in selling under execution, to make the sale expressly subject to prior incumbrances.—*Ramsdell v. Tama Water Power*, Iowa, 51 N. W. Rep. 245.

205. SET-OFF—Claims in Different Rights.—An executrix and sole devisee and legatee, who has paid all the debts of her testator, may, in an action against her for services rendered her personally, set off a debt due by plaintiff to the estate of her testator, though there was never any publication of notice to creditors to present their claims.—*Blood v. Kane*, N. Y., 29 N. E. Rep. 994.

206. SHIPPING — Loans. — A part owner of a vessel is not legally responsible for the payment of money borrowed by the ship's husband, when the vessel is out of commission, to pay an old indebtedness contracted for the benefit of the vessel.— *Chase v. McLean*, N. Y., 29 N. E. Rep. 986.

207. STATE TREASURER—Interest.—A State treasurer, who by Const. art. 10, § 12, is made absolutely liable for money received as treasurer, is not liable for interest received on money deposited in a bank in the absence of a statutory provision to that effect.—*People v. Walsen*, Colo., 28 Pac. Rep. 1119.

208. TAXATION.—The lawful levy of a tax after a complaint filed to restrain its collection under an alleged unlawful levy will not defeat the action.—*Lake Shore & M. S. Ry. Co. v. Smith*, Ind., 29 N. E. Rep. 1075.

209. TAXATION—Assessments.—Gen. St. §§ 171, 269, forbidding interference with the collection of taxes, do not apply to a proceeding to compel a county treasurer to correct a tax duplicate by deducting the amount of an increase in the valuation of personal property made by an auditor without authority of law.—*National Bank of Newberry v. Boyd*, S. Car., 14 S. E. Rep. 496.

210. TAXATION — Collection.—A decree of the circuit court having jurisdiction of the subject-matter and parties, and exercising its jurisdiction pursuant to the special power conferred on it by the Arkansas overdue tax law, ordering the sale of land for non-payment of taxes, cannot be attacked collaterally.—*Burcham v. Terry*, Ark., 18 S. W. Rep. 458.

211. TAX-SALES — Acquiescence — Injunction.—The plaintiff must prove his alleged ownership of the property advertised for the payment of taxes to enable him to maintain an injunction, and have the taxes canceled bearing on the property.—*Billgery v. Arnault*, La., 10 South. Rep. 497.

212. TENANTS IN COMMON—Foreclosure.—Where tenants in common, who are in possession of the land, and in receipt of the rents and profits, induce the holder of a mortgage on the same, for much less than the value of the land, to foreclose, and they buy in the land at the foreclosure sale for the amount due on the mortgage, they will be decreed to hold the title so acquired in trust for themselves and for their co-tenants, who were not in possession.—*Carpenter v. Carpenter*, N. Y., 29 N. E. Rep. 1013.

213. TRESPASS — Necessity of Possession.—Where a railroad company unlawfully enters land, and erects and operates a railroad thereon, the owner, after an action for trespass is barred by limitations, cannot maintain trespass based on the continued holding, since possession in the owner, either actual or constructive, is essential.—*Wood v. Michigan Air-Line Ry. Co.*, Mich., 51 N. W. Rep. 265.

214. TRESPASS—Venue.—An action of trespass for cutting and removing timber is within Civil Code, § 62, subsec. 4, requiring an action for an injury to real property to be brought in the county in which the property is situated.—*Meehan v. Edwards*, Ky., 18 S. W. Rep. 519.

215. TRIAL—Argument of Counsel.—Where, in an action against a railroad company for personal injuries to plaintiff's wife, defendant procures, without opposition, an order of the court to have the wife's person examined by physicians, and the physicians, without objection, testify at the trial as to the examination, it is error for counsel for plaintiff, in his argument to the jury, to excite their prejudice by referring to the examination as an outrage, etc.—*Gulf, C. & S. F. Ry. Co. v. Butcher*, Tex., 18 S. W. Rep. 583.

216. TRIAL—Jury—Verdict.—The testimony of jurors will not be received to impeach or avoid their verdict in respect to matters which essentially inhere in the verdict itself,—as that they agreed to the verdict from motives of ill will towards the unsuccessful party, or a third party, supposed to be directly interested in the controversy, or other matters resting alone in the breasts of the jurors.—*Johnson v. Parrotte*, Neb., 51 N. W. Rep. 290.

217. TRUSTS—Beneficiaries.—A deed conveying land in trust for the grantor's maintenance from the income and profits, and providing that upon his death the property shall descend to his legal representatives, creates an irrevocable trust.—*Ewing v. Jones*, Ind., 29 N. E. Rep. 1057.

218. TRUSTS—Beneficiaries.—Where a testator devises property in trust, the income to be paid to his wife for life, "upon her sole separate receipt or order in writing, to be from time to time, and not by anticipation, given," the *cestui que trust*, having received payment from the trustee in advance of the time when she could have compelled them, is estopped from afterwards asserting that she had no right to the payments under the will.—*In re King's Estate*, Penn., 28 Atl. Rep. 603.

219. VENDOR'S LIEN.—Where the vendor of real estate covenants against liens, and during the pendency of an action subsequently brought by him to determine the right of a person claiming a prior lien transfers a note given as a part of the purchase price, the purchaser of such note before maturity and for a valuable consideration is not charged with the notice of the pendency of such action.—*Gannon v. Northwestern Nat. Bank*, Tex., 18 S. W. Rep. 573.

220. WATER-COURSES—Action for Diverting.—Where a stream, from time immemorial, had flowed through plaintiff's land in a preceptible current, and in a well-defined channel, his right to have such flow continued was not affected by the fact that the source of the stream was a spring on defendant's land.—*Chauvet v. Hill*, Cal., 28 Pac. Rep. 1066.

221. WILLS—Construction.—By a codicil testator gave to one of his sons, "out of any money due and belonging to my estate," a certain amount, to rebuild the house, which had been burned since the making of the will, by which the farm on which the house stood had been given to said son: *Held* that, in the absence of any circumstances to indicate a contrary intention, this was not a charge on the land.—*Lee v. Lee*, Va., 14 S. E. Rep. 534.

222. WILLS — Probate.—The fact that a person has made a contract to devise her property to certain persons, and has executed a will in pursuance thereof, does not affect the right to probate of a subsequent will executed by her, giving her property to others, since the probate of a will establishes only its due execution, and the parties, if entitled to the property under the contract, would have their remedy by way of contract or trust.—*Sumner v. Crane*, Mass., 29 N. E. Rep. 1151.

223. WITNESS — Transactions with Decedents.—Rev. St. § 4069, precluding "a person from, through, or under whom a party derives his interest or title" from testifying to "any transaction or communication by him personally with a deceased person" in an action "in which the opposite party derives his title or sustains his liability to the cause of action from, through, or under such deceased person," does not apply to testimony as to communications by a deceased grantor to his grantee in trust, in an action of ejectment by the *cestui que trust* against persons claiming adversely under tax-titles.—*Begole v. Hazzard*, Wis., 51 N. W. Rep. 325.

224. WITNESS—Transactions with Deceased Person.—The Kentucky statute, providing that no person shall testify for "himself" as to any verbal statement of a deceased person, will not, in a suit by two beneficiaries against the executor of their deceased trustee to establish the trust, prevent each from testifying in favor of the other as to conversations of the deceased trustee respecting the trust.—*Beach v. Cummins' Ex'r*, Ky., 18 S. W. Rep. 360.

ABSTRACTS OF DECISIONS OF THE MISSOURI COURTS OF APPEAL.

KANSAS CITY COURT OF APPEALS.

ATTACHMENT—Fraudulent Conveyance.—In a suit by attachment, *held*, that where the mortgagor of chattels, with knowledge and consent of mortgagee, is permitted to continue in possession, and sell the goods in the usual course of mortgagor's business, such a conveyance is fraudulent in law as to creditors, existing and subsequent, and purchases, whether made to secure a *bona fide* debt or not, furnishes grounds for an attachment. In an attachment proceeding against the mortgagor, the matter at issue is his fraud or good faith, and if he has executed a fraudulent conveyance, the attachment will lie under the seventh clause of sec. 521 R. S. 1889, whether the grantees participated, or not, in the fraud.—*Sauer v. Behr.*

BILL OF EXCEPTIONS—Improper Conduct of the Attorney at the Trial.—Where it is urged as ground for reversal that, in the closing argument at the trial, plaintiff's counsel went outside of the record, and stated to the jury irrelevant and prejudicial matter, a statement of the objectionable matter must be contained in the bill of exception, over the certificate and seal of the trial court. The matter set out in the motion for a new trial, or in the affidavits filed in support thereof, does not bear the proper stamp of authority.—*Havens v. Lawton.*

CITIES AND TOWNS — Unincorporated—Fencing Railway.—In a suit under sec. 4428, R. S. 1889, against a railroad for killing a cow within the limits of an unincorporated town: *Held*, that if the town be regularly laid out into lots, blocks and streets, which streets cross the railway and have been dedicated to public use as highways, it would be unlawful for the railroad company to fence them up, and it makes no difference whether the town so laid out in streets was incorporated or not.—*Vanderwerker v. The Mo. Pac. Ry. Co.*

CONCLUSIONS OF LAW—Statement of, by the Court.—Under sec. 2135, R. S. 1889, it is the duty of the court, when requested by either party, to state in writing its finding of facts and conclusions of law thereon, separately. This statement becomes part of the record proper, and is a substitute for a special verdict. If the finding is attacked as not having evidence to support it, or as not embracing all the issues, the evidence must be preserved by bill of exceptions. The trial court is not required to give its reasons for its conclusions, and must state the conclusions of law from the facts found only. The conclusions of law found by the court take the place of declarations of law in part, only.—*Nichols v. Carter.*

CONTRACT—Custom.—An agreement to deliver a certain quantity of wheat and take in payment therefor a specific quantity of flour, and not a price in money, is a contract of exchange and not of sale, but the distinction between the two is rather one of shadow than of substance, for in both cases the title is absolutely transferred, and the same rules of law apply. A custom cannot vary a general and well settled rule of law. A person entering into a contract is not bound by the usages of a particular business, unless it is so general as to furnish a presumption of knowledge, or it is proved that he was acquainted with it.—*Martin v. Ashland Mill Co.*

CONTRIBUTORY NEGLIGENCE—Railways.—In a suit for damages for personal injury, *held*, that defendant by selling a ticket to plaintiff for a certain station, impliedly obligated itself to stop its train and remain at that station long enough for plaintiff to leave the train in safety; that it is not negligence *per se* for a passenger to jump from a moving train. When a railroad company fails to bring its train to a full stop at a station, it will be liable in damages for injuries sustained by a passenger in attempting to get off, if, under all the circumstances, it was prudent for him to do so. All the circumstances of each case must be considered in determining whether in that case, there was contributory negligence, or want of ordinarycare.—*Richmond v. The Quincy, Omaha & K. C. Ry. Co.*

HUSBAND AND WIFE—Maintenance.—In a suit instituted under section 6856 R. S. 1889, by wife vs. the husband for maintenance, *held*, that if the husband's conduct is such as to render the wife's condition intolerable or unbearable at his home, she can abandon the home without forfeiting her right to support or maintenance by him, and consideration should be given to the situation, condition and style of living of the parties, the husband's financial ability (though poverty will not relieve him of the obligation) in fixing the sum he should pay, and proceeds of pension money should be estimated in considering his ability to pay.—*McGrady v. McGrady.*

INSURANCE POLICY—Stipulations on Slips Attached Thereto.—In a suit in a policy of fire insurance containing a clause that, the assured should keep a set of books showing a complete record of his business, and keep such books in an iron safe, or some secure place not exposed to a fire which would destroy his business house, at night and at all times when the store mentioned in the policy was not actually opened for business: *Held*, the store having been burned at night, that performance of one or other of these requirements was a condition precedent to plaintiff's right to recover that portion of his insurance which was upon his merchandise, and that such a clause is properly regarded as a part of the policy, though it is printed on a slip attached thereto.—*The Standard Fire Ins. Co.*

PROMISSORY NOTE—Payment to Agent.—If a debtor, owing money on a written security, pays, to or settles with, another as agent, it is his duty, at his peril, to see that the person thus paid, or settled with, is in possession of the security. If not thus in possession, the debtor must show that the person to whom he pays, or with whom he settles has special authority, or has been represented by the creditor to have said authority. The true holder, alone, of the note can satisfy the record, and possession of the deed of trust gives no authority. One who, without the production of the note, takes satisfaction of the deed of trust, is charged with notice of lack of authority.—*Cummings v. Hurd.*

PROMISSORY NOTE—Transfer of.—In an action on a promissory note payable to the maker's order, and transferred by the delivery, *held*, that the word "negotiable" as used in sec. 733 R. S. 1889, when applied to a note payable to order, means to appoint or order its payment by indorsement; that the word "negotiated," used in sec. 735, means not indorsement alone, but also, delivery, and when applied to a note made payable to the maker's own order, it necessarily means something else than indorsement, as a man cannot well order himself to pay himself.—*Lowrie v. Zunkel.*

REPLEVIN—Stoppage in Transitu.—In an action of replevin, *held*, the right of stoppage *in transitu* is not lost by a constructive delivery, if the delivery to a carrier, or agent of the vendee, be for the purpose of conveyance to or on account of the vendee; if the goods are delivered to the carrier for safe keeping, or he is by special agreement converted into a special agent for the vendee, beyond the duty and position of a mere carrier, the transit of the goods terminates and with it the right of stoppage.—*Scott v. W. B. Grimes Dry Goods Co.*

TELEGRAPH COMPANY—Damages.—In suit for damages for failure to deliver a telegram, *held*, that a stipulation on the face of the blank on which the telegram was written, that: "The company will not be liable for damages in any case where the claim is not presented, in writing, within sixty days after sending the message," is reasonable and will be upheld by the court. Plaintiff by failing to comply therewith, lost any recourse it ever had against defendant.—*Smith-Frazier Boot & Shoe Co. v. Western Union Telegraph Co.*

UNLAWFUL DETAINER.—In an action of unlawful detainer, *held*, that a lessee never in possession, and to whom the lessor refuses possession, cannot maintain unlawful detainer against the lessor.—*Long v. Noe.*